

RECORD OF TRIAL COVER SHEET

**IN THE
MILITARY COMMISSION
CASE OF**

UNITED STATES

V.

**ALI HAMZA AHMAD
SULAYMAN AL BAHLUL**

ALSO KNOWN AS:

**ALI HAMZA AHMED SULEIMAN AL BAHLUL
ABU ANAS AL MAKKI
ABU ANAS YEMENI
MOHAMMAD ANAS ABDULLAH KHALIDI**

No. 040003

VOLUME VI OF ____ TOTAL VOLUMES

**SELECTED AL BAHLUL FILINGS
AT U.S. DISTRICT COURT DISTRICT OF COLUMBIA
(WASHINGTON DC)**

**U.S. DISTRICT COURT'S PUBLIC RECORDS—
NO REDACTIONS**

United States v. Ali Hamza Sulayman al Bahlul, No. 040003

INDEX OF VOLUMES

A more detailed index for each volume is included at the front of the particular volume concerned. An electronic copy of the redacted version of this record of trial is available at <http://www.defenselink.mil/news/commissions.html>.

Some volumes have not been numbered on the covers. The numerical order for the volumes of the record of trial, as listed below, as well as the total number of volumes will change as litigation progresses and additional documents are added.

After trial is completed, the Presiding Officer will authenticate the final session transcript and exhibits, and the Appointing Authority will certify the records as administratively complete. The volumes of the record of trial will receive their final numbering just prior to the Appointing Authority's administrative certification.

Transcript and Review Exhibits are part of the record of trial, and are considered during appellate review. Volumes I-VI, however, are allied papers and as such are not part of the record of trial. Allied papers provide references, and show the administrative and historical processing of a case. Allied papers are not usually considered during appellate review. *See generally United States v. Gonzalez*, 60 M.J. 572, 574-575 (Army Ct. Crim. App. 2004) and cases cited therein discussing when allied papers may be considered during the military justice appellate process, which is governed by 10 U.S.C. § 866). For more information about allied papers in the military justice process, see Clerk of Military Commission administrative materials in Volume III.

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NUMBER

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| II* | Supreme Court Decisions: <i>Rasul v. Bush</i> , 542 U.S. 466 (2004); <i>Johnson v. Eisentrager</i> , 339 U.S. 763 (1950); <i>In re Yamashita</i> , 327 U.S. 1 (1946); <i>Ex Parte Quirin</i> , 317 U.S. 1 (1942); <i>Ex Parte Milligan</i> , 71 U.S. 2 (1866) |
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[†] Interim volume numbers. Final numbers to be added when trial is completed.

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:05-cv-02104-RBW**

ALI AL JAYFI et al v. BUSH et al
Assigned to: Judge Reggie B. Walton
Cause: 28:2241 Petition for Writ of Habeas Corpus
(federa

Date Filed: 10/27/2005
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: U.S. Government
Defendant

| Date Filed | # | Docket Text |
|-------------------|--------------------------|---|
| 10/27/2005 | <u>1</u> | PETITION for Writ of Habeas Corpus (Filing fee \$ 5.) filed by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E# <u>6</u> Exhibit F)(td,) (Entered: 10/28/2005) |
| 10/27/2005 | <u>2</u> | NOTICE OF RELATED CASE by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. Case related to Case No. 05-1641 CKK. (td,) (Entered: 10/28/2005) |
| 11/01/2005 | | Case Randomly Reassigned to Judge Reggie B. Walton. Judge Colleen Kollar-Kotelly determined that this case is not related to CA 05-2104 and accordingly, no longer assigned to her. (jeb,) (Entered: 11/01/2005) |

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| 11/02/2005 | <u>3</u> | ORDER referring all motions pertaining to interpretation or construction of any protective order which has been entered in any of these cases to Magistrate Judge Alan Kay; referring to Magistrate Judge Kay all disputes pertaining to logistical issues, such as communications with or visits to clients and counsel. Signed by Judge Gladys Kessler, Chair of Calendar and Case Management Committee, on 11/2/05. (Entered: 11/02/2005) |
| 11/07/2005 | <u>4</u> | MOTION and Memorandum for the Immediate Issuance of Writs of Habeas Corpus Pursuant to 28 U.S.C. Section 2243, or, Alternatively, to Issue and Order to Show Cause by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. (Attachments: # <u>1</u> Declaration of Wesley R. Powell# <u>2</u> Exhibit A# <u>3</u> Exhibit B# <u>4</u> Exhibit C# <u>5</u> Exhibit D# <u>6</u> Exhibit E# <u>7</u> Exhibit F# <u>8</u> Exhibit G# <u>9</u> Exhibit H# <u>10</u> Exhibit I# <u>11</u> Exhibit J# <u>12</u> Exhibit K# <u>13</u> Exhibit L# <u>14</u> Text of Proposed Order Habeas Corpus# <u>15</u> Text of Proposed Order Show Cause)(Powell, Wesley) (Entered: 11/07/2005) |
| 11/18/2005 | <u>5</u> | AFFIDAVIT / <i>Declaration of Service</i> by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. (Powell, Wesley) (Entered: 11/18/2005) |
| 11/18/2005 | <u>6</u> | MOTION to Stay <i>Proceedings Pending Related Appeals</i> by GEORGE W. BUSH, DONALD RUMSFELD, JAY HOOD, MIKE BUMGARNER. (Attachments: # <u>1</u> Text of Proposed Order)(Noronha, Preeya) (Entered: 11/18/2005) |
| 11/18/2005 | <u>7</u> | Memorandum in opposition to motion re <u>4</u> <i>for Immediate Issuance of Writs of Habeas Corpus or an Order to Show Cause (also filed as docket</i> |

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| | | <i>no. 6)</i> filed by GEORGE W. BUSH, DONALD RUMSFELD, JAY HOOD, MIKE BUMGARNER. (Attachments: # 1 Text of Proposed Order)(Noronha, Preeya) (Entered: 11/18/2005) |
| 11/21/2005 | 8 | NOTICE of Appearance by Terry Marcus Henry on behalf of GEORGE W. BUSH, DONALD RUMSFELD, JAY HOOD, MIKE BUMGARNER (Henry, Terry) (Entered: 11/21/2005) |
| 11/29/2005 | 9 | REPLY to opposition to motion re 6 <i>Respondents' Opposition to Motion for Writ of Habeas Corpus or Order to Show Cause and Partial Consent to Respondents' Motion to Stay Proceedings</i> filed by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. (Attachments: # 1 Affidavit Declaration and Exhibits A-B# 2 Text of Proposed Order)(Powell, Wesley) (Entered: 11/29/2005) |
| 12/09/2005 | 10 | REPLY to opposition to motion re 6 <i>Respondents' Reply In Support Of Motion To Stay</i> filed by GEORGE W. BUSH, DONALD RUMSFELD, JAY HOOD, MIKE BUMGARNER. (Perez, Marc) (Entered: 12/09/2005) |
| 12/14/2005 | 11 | MOTION to Transfer Case (<i>Habeas Corpus Action</i>) to Calendar Committee for Reassignment as a Related Case by ALI HAMZA AHMED SULIMAN BAHLOOL. (Attachments: # 1 Exhibit A)(Powell, Wesley) (Entered: 12/14/2005) |
| 12/14/2005 | 12 | SUPPLEMENTAL PETITION for Writ of Habeas Corpus filed by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit |

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| | | 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9)(nmw,) (Entered: 12/15/2005) |
| 12/19/2005 | 13 | ORDER denying Motion to Transfer Case 11 . Signed by Judge Reggie B. Walton on 12/19/05. (lcrbw1,) (Entered: 12/19/2005) |
| 12/22/2005 | 14 | ORDER denying 4 Motion for Immediate Issuance of Writ, granting 6 Motion to Stay. Signed by Judge Reggie B. Walton on 12/22/05. (lcrbw1,) (Entered: 12/22/2005) |
| 12/30/2005 | 15 | MOTION to Stay <i>Military Commission Proceedings and For Expedited Briefing Schedule</i> by ALI HAMZA AHMED SULIMAN BAHLOOL. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C)(Powell, Wesley) (Entered: 12/30/2005) |
| 12/30/2005 | 16 | AFFIDAVIT / <i>Declaration of Service of Petitioner's Motion to Stay Military Commission Proceedings and for Expedited Briefing Schedule</i> by ALI HAMZA AHMED SULIMAN BAHLOOL. (Powell, Wesley) (Entered: 12/30/2005) |
| 01/03/2006 | | MINUTE ORDER. The government shall file an opposition to the petitioner's motion to stay by 1/6/06. Signed by Judge Reggie B. Walton on 1/3/06. (lcrbw1,) (Entered: 01/03/2006) |
| 01/03/2006 | | MINUTE ORDER. It is further ordered that the government's opposition shall address the effect, if any, of the signing of H.R. 2863, the "Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006." Signed by Judge Reggie B. Walton on 1/3/06. (lcrbw1,) (Entered: 01/03/2006) |
| 01/04/2006 | 17 | ORDER to show cause why this case should not be dismissed for lack of jurisdiction. Signed by Judge Reggie B. Walton on 1/4/06. (lcrbw1,) (Entered: 01/04/2006) |
| 01/04/2006 | 18 | NOTIFICATION OF SUPPLEMENTAL AUTHORITY by respondents GEORGE WALKER BUSH, and DONALD RUMSFELD, et al. (Attachments: # 1 Exhibit)(jeb,) (Entered: 01/04/2006) |
| 01/06/2006 | 19 | MOTION to Withdraw <i>Motion to Stay Military Commission Proceedings and for Expedited Briefing Schedule</i> by ALI HAMZA AHMED SULIMAN BAHLOOL. (Attachments: # 1 Text of Proposed Order)(Powell, Wesley) (Entered: 01/06/2006) |
| 01/06/2006 | 20 | AFFIDAVIT / <i>Declaration of Service of Petitioner's Motion to Withdraw</i> |

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| | | <i>Motion to Stay Military Proceedings and for Expedited Briefing Schedule</i> by ALI HAMZA AHMED SULIMAN BAHLOOL. (Powell, Wesley) (Entered: 01/06/2006) |
| 01/06/2006 | | MINUTE ORDER granting 19 Motion to Withdraw, terminating 15 Motion to Stay. Signed by Judge Reggie B. Walton on 1/6/05. (lcrbw1,) (Entered: 01/06/2006) |
| 01/06/2006 | 21 | Joint MOTION to Vacate <i>January 4, 2006 Orders to Show Cause</i> by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Text of Proposed Order)(Powell, Wesley) (Entered: 01/06/2006) |
| 01/06/2006 | 22 | AFFIDAVIT <i>Declaration of Service of Petitioners' Consolidated Motion to Vacate January 4, 2006 Orders to Show Cause</i> by MUHAMMED AHMED MUHAMMED ALGHURBANY, ALI HAMZA AHMED SULIMAN BAHLOOL, ABDOUL MOHAMMED AHMED BAHLOOL, SALEH MOHAMMED SELEH AL THABBII, FATMAH QHASIM AL AHMADI, ABDUL AL QADER AHMED HUSSAIN, ABDULGADER AHMED HASIN ABOBAKER, ISSAM HAMID ALI BIN ALI AL JAYFI, HAMID ALI AL JAYFI, OTHMAN ALI MOHAMMED AL SHAMRANY, ALI MOHAMED OMAR AL SHOMRANY, KHALID MOHAMMED AL THABBI. (Powell, Wesley) (Entered: 01/06/2006) |
| 01/06/2006 | | MINUTE ORDER granting 21 Motion to Vacate January 4, 2006 Order to Show Cause. Signed by Judge Reggie B. Walton on 1/6/06. (lcrbw1,) (Entered: 01/06/2006) |
| 01/11/2006 | 23 | ORDER denying without prejudice all pending motions until such time as the District of Columbia Circuit resolves the question of this Court's jurisdiction to adjudicate these cases; staying the action pending the jurisdictional ruling of the District of Columbia Circuit, signed by Judge Reggie B. Walton on 1/11/06. (Entered: 01/11/2006) |

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI,
Detainee,
Guantánamo Bay Naval Station,
Guantánamo Bay, Cuba,

**HAMID ALI AL JAYFI,
As Next Friend of ISSAM HAMID ALI BIN ALI AL
JAYFI,**

OTHMAN ALI MOHAMMED AL SHAMRANY,
Detainee,
Guantánamo Bay Naval Station,
Guantánamo Bay, Cuba

**ALI MOHAMED OMAR AL SHOMRANY,
As Next Friend of OTHMAN ALI MOHAMMED AL
SHAMRANY,**

KHALID MOHAMMED AL THABBI,
Detainee,
Guantánamo Bay Naval Station,
Guantánamo Bay, Cuba,

**MUHAMMED AHMED MUHAMMED AL
GHURBANY, As Next Friend of KHALID
MOHAMMED AL THABBI,**

ALI HAMZA AHMED SULIMAN BAHLOOL,
Detainee,
Guantánamo Bay Naval Station,
Guantánamo Bay, Cuba,

**ABDOUL MOHAMMED AHMED BAHLOOL,
As Next Friend of ALI HAMZA AHMED SULIMAN
BAHLOOL**

**SALEH MOHAMMED SELEH AL THABBII, a/k/a
SALEH MOHAMMED AL DHABI,
Detainee,
Guantánamo Bay Naval Station,
Guantánamo Bay, Cuba,**

PETITION FOR WRITS OF HABEAS CORPUS

FATMAH QHASIM AL AHMADI
As Next Friend of SALEH MOHAMMED SELEH
AL THABBII

ABDUL AL QADER AHMED HUSSAIN,
Detainee,
Guantánamo Bay Naval Station
Guantánamo Bay, Cuba,

ABDULGADER AHMED HASIN ABOBAKER
As Next Friend of ABDUL AL QADER AHMED
HUSSAIN

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH,
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

DONALD RUMSFELD,
Secretary, United States
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

ARMY BRIG. GEN. JAY HOOD,
Commander, Joint Task Force - GTMO
JTF-GTMO
APO AE 09360; and

ARMY COL. MIKE BUMGARNER,
Commander, Joint Detention
Operations Group – JTF-GTMO
JTF-GTMO
APO AE 09360,

Respondents/Defendants.

PETITION FOR WRITS OF HABEAS CORPUS

1. Petitioners Issam Hamid Ali Bin Ali Al Jayfi, Othman Ali Mohammed Al Shamrany, Khalid Mohammed Al Thabbi, Ali Hamza Ahmed Suliman Bahloul, Saleh Mohammed Seleh Al Thabbii and Abdu Al Qader Ahmed Hussain (collectively the “Detained Petitioners”) seek Writs of Habeas Corpus and the injunctive and declaratory relief described below.

2. Detained Petitioners act on their own behalf and through their Next Friends: Hamid Ali Al Jayfi, the father of Issam Hamid Ali Bin Ali Al Jayfi; Ali Mohammed Omar Al Shomrany, the father of Othman Ali Mohammed Al Shamrany; Muhammed Ahmed Muhammed Al Ghurbany, the brother of Khalid Mohammed Al Thabbi; Abdoul Mohammed Ahmed Bahloul, the cousin of Ali Hamza Ahmed Suliman Bahloul; Fatmah Qhasim Al Ahmed, the wife of Saleh Mohammed Seleh Al Thabbii;¹ Abdulgader Ahmed Hasin Abobaker, the father of Abdul Al Qader Ahmed Hussain (collectively the “Next Friends”).² All of the Detained Petitioners and all of the Next Friends are citizens of Yemen.

3. Detained Petitioners are civilians wrongly classified as “enemy combatants” by the President of the United States and are being held virtually *incommunicado* in military custody at the U.S. Naval Station at Guantánamo Bay, Cuba (“Guantánamo”), without basis, without charge, without access to counsel, and without being afforded any fair process by which they might challenge their detention. Detained Petitioners are being held by color and authority of the Executive, and in violation of the U.S. Constitution, laws and treaties of the United States

¹ We understand this Detained Petitioner has at times been referenced as Saleh Mohammed Al Dhabii.

² See Ex. A (Authorization of Hamid Ali Al Jayfi); Ex. B (Authorization of Ali Mohammed Omar Al Shomrany); Ex. C (Authorization of Muhammed Ahmed Muhammed Al Ghurbany); Ex. D (Authorization of Abdoul Mohammed Ahmed Bahloul); Ex. E (Authorization of Fatmah Qhasim Al Ahmed); Ex. F (Authorization of Abdulgader Ahmed Hasin Abobaker).

and customary international law. Accordingly, this Court should issue a Writ of Habeas Corpus compelling Respondents either to release the Detained Petitioners or to establish in this Court a lawful basis for the Detained Petitioners' detention. This Court should also order the injunctive and declaratory relief described below.

4. Pursuant to the President's authority as Commander-in-Chief, his authority under the laws and usages of war, or under the November 13, 2001 Military Order, *see* ¶¶ 22-24 *infra*, Respondents George W. Bush, President of the United States, Donald H. Rumsfeld, U.S. Secretary of Defense, Army Brigadier General Jay Hood, Commander of Joint Task Force-GTMO, and Army Colonel Mike Bumgarner, Commander, Joint Detention Operations Group, Joint Task Force-GTMO, are either ultimately responsible for or have been charged with the responsibility of maintaining the custody and control of the Detained Petitioners at Guantánamo Bay.

JURISDICTION

5. Petitioners bring this action under 28 U.S.C. §§ 2241(a), 2241(c)(1) and (c)(3), and 2242. Detained Petitioners further invoke this Court's jurisdiction under 28 U.S.C. §§ 1331, 1350, 1651, 2201, and 2202; 5 U.S.C. § 702; and Articles I and II of and the Fifth, Sixth, and Eighth Amendments to the United States Constitution. Because they seek declaratory relief, Petitioners also rely on Fed. R. Civ. P. 57.

6. This Court is empowered under 28 U.S.C. § 2241 to grant the Writ of Habeas Corpus and to entertain the Petition filed on behalf of the Detained Petitioners by the Next Friends under 28 U.S.C. § 2242. This Court is further empowered to declare the rights and other legal relations of the parties herein by 28 U.S.C. § 2201 and to effectuate and enforce declaratory relief by all necessary and proper means by 28 U.S.C. § 2202, as this case involves an actual

controversy within the Court's jurisdiction. Finally, this Court is authorized to issue all writs necessary or appropriate in aid of its jurisdiction by 28 U.S.C. § 1651.

PARTIES

7. Detained Petitioners are citizens of Yemen who are presently incarcerated and held in Respondents' unlawful custody and control at Guantánamo. Because the Detained Petitioners have been denied access to legal counsel and to the courts of the United States, family members act as Next Friends for them in this proceeding. All of the Next Friends are citizens of Yemen.

8. Respondent George W. Bush is the President of the United States and Commander-in-Chief of the U.S. military. Detained Petitioners are being detained pursuant to President Bush's authority as Commander-in-Chief, under the laws and usages of war, or, alternatively, pursuant to the Military Order of November 13, 2001, Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57,833 (Nov. 13, 2001) ("Executive Order"). President Bush is responsible for the Detained Petitioners' unlawful detention and is sued in his official capacity.

9. Respondent Rumsfeld is the Secretary of the U.S. Department of Defense. Pursuant to the President's authority as Commander-in-Chief, under the laws and usages of war, or, alternatively, pursuant to the Executive Order, Respondent Rumsfeld has been charged with the responsibility of maintaining the custody and control of the Detained Petitioners. He is sued in his official capacity.

10. Respondent Hood is the Commander of Joint Task Force-GTMO, the task force running the detention operation at Guantánamo. He has supervisory responsibility for the Detained Petitioners and is sued in his official capacity.

11. Respondent Bumgarner is the Commander of the Joint Detention Operations Group and the JTF-GTMO detention camps, including the U.S. facility where the Detained Petitioners are presently held. He is the immediate custodian responsible for the Detained Petitioners' detention and is sued in his official capacity.

12. Respondents are directly responsible for any activities undertaken by or under the supervision of any agents or employees acting on their behalf, or agents or employees of private contractors ("contractor employees") with whom any agency under Respondents' authority or supervision has contracted for the provision of services at Guantánamo. All references to Respondents' actions in this Petition include activities performed by Respondents' agents or employees, other government agents or employees, or contractor employees.

STATEMENT OF FACTS

13. Upon information and belief, Detained Petitioners are not, nor have they ever been, enemy aliens, lawful or unlawful belligerents, or combatants of any kind under any definition adopted by the U.S. Government in any civil or military proceeding.

14. Upon information and belief, Detained Petitioners are not, nor have they ever been, "enemy combatants" who were "part of or supporting forces hostile to the United States or coalition partners in Afghanistan and who were engaged in an armed conflict against the United States there." *Hamdi v. Rumsfeld*, 124 S. Ct. 2633, 2639 (2004).

15. Detained Petitioners seek to enforce their right to a judicial determination by an appropriate and lawful authority that there is a factual and legal basis for Respondents' determination that each of the Detained Petitioners is either an "enemy combatant" as defined by the U.S. Supreme Court in *Hamdi* or an "enemy combatant" as that term is defined and used by

the Executive in the Combatant Status Review Tribunals process begun by the Department of Defense in 2004.

16. Upon information and belief, at the time of their seizure and detention, Detained Petitioners were not members of the Taliban Government's armed forces, Al Qaeda or any other organization or force hostile to the United States. Upon information and belief, they did not cause or attempt to cause any harm to American personnel or property prior to their detention, and they had no involvement, direct or indirect, in the terrorist attacks on the United States on September 11, 2001, the ensuing international armed conflict, or any act of international terrorism attributed by the United States to Al Qaeda. They remain incarcerated at the U.S. Naval base at Guantánamo, a territory over which the United States exercises exclusive jurisdiction and control.

17. Detained Petitioners have not been afforded any procedures that would satisfy their rights under the most fundamental common law notions of due process, the U.S. Constitution, the laws and treaties of the United States, or customary international law.

18. Upon information and belief, Detained Petitioners desire to pursue in the courts of the United States every available legal challenge to the lawfulness of their detention.

The Joint Resolution

19. In the wake of the September 11, 2001 attacks on the United States and at the direction of Respondent Bush, the United States began a massive military campaign against the Taliban Government, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or

[that] harbored such organizations or person.” Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001) (“Joint Resolution”).

20. Upon information and belief, Detained Petitioners did not participate in the armed conflict at any point in time; therefore, they are not properly detained pursuant to the President’s authority as Commander-in-Chief, under the laws and usages of war, or under the Joint Resolution.

21. Upon information and belief, Detained Petitioners are not, and have never been, members of Al Qaeda or any other terrorist group and have not committed or espoused any violent act against any American person or property. They had no involvement, direct or indirect, in the terrorist attacks on the United States on September 11, 2001, or any act of international terrorism attributed by the United States to Al Qaeda or any other terrorist group. They are not properly subject to the detention order issued by President Bush. Because they did not participate in the armed conflict at any point in time, they are not properly subject to the President’s authority as Commander-in-Chief or under the laws and usages of war.

The Executive Order

22. On November 13, 2001, Respondent Bush issued an Executive Order authorizing Respondent Rumsfeld to detain indefinitely anyone President Bush has “reason to believe”:

- i. is or was a member of the organization known as al [Qaeda];
- ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
- iii. has knowingly harbored one or more individuals described in subparagraphs (i) or (ii)

See Military Order of November 13, 2001, Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57,833, § 2(a)(1) (Nov. 13, 2001). Respondent Bush must make this determination in writing. The Executive Order was neither authorized nor directed by Congress and is beyond the scope of the Joint Resolution of September 18, 2001.

23. The Executive Order purports to vest Respondent Bush with the sole discretion to identify individuals who fall within its purview. It establishes no standards governing the exercise of his discretion. Once a person has been detained, the Executive Order contains no provision for the person to be notified of the charges he may face. The Executive Order authorizes detainees to be confined indefinitely without charges. It contains no provision for a detainee to be notified of his rights under domestic and international law and provides neither the right to counsel nor the rights to notice of consular protection or to consular access at the detainee's request. It provides no right to appear before a neutral tribunal to review the legality of a detainee's continued detention and contains no provision for recourse to an Article III court. In fact, the Executive Order expressly bars review by any court. The Executive Order authorizes indefinite and unreviewable detention, based on nothing more than the President's written determination that an individual is subject to its terms.

24. The Executive Order was promulgated in the United States and in this judicial district; the decision to incarcerate the Detained Petitioners was made by Respondents in the United States and in this judicial district; the decision to detain the Detained Petitioners at Guantánamo was made in the United States and in this judicial district; and the decision to continue detaining the Detained Petitioners was, and is, being made by Respondents in the United States and in this judicial district.

25. Upon information and belief, Respondent Bush has never certified or determined in any manner, in writing or otherwise, that the Detained Petitioners are subject to the Executive Order.

26. Detained Petitioners are not properly subject to the Executive Order.

27. Detained Petitioners have not been, and are not being, detained lawfully either pursuant to the Executive Order, the President's authority as Commander-in-Chief, or under the laws and usages of war. Detained Petitioners were not arrested or detained by the United States in the course of an armed conflict and, therefore, are not properly detained under the President's authority as Commander-in-Chief or under the laws and usages of war.

Guantánamo Bay Naval Station

28. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray at the U.S. Naval Base at Guantánamo. In April 2002, all prisoners were transferred to Camp Delta, a more permanent prison facility at Guantánamo. Currently, prisoners are housed in Camp Delta and Camp Five, an additional maximum-security interrogation and detention center.

29. Prisoners incarcerated at Guantánamo are entitled to test the legality of their detention in the federal courts. *See Rasul v. Bush*, 124 S. Ct. 2686, 2698 (2004).

30. Upon information and belief, by early 2002, the precise date being unknown to counsel, but known to Respondents, the U.S. military transferred the Detained Petitioners to Guantánamo, where they have been held ever since in the custody and control of Respondents.

The Conditions of Detention at Guantánamo

31. Since gaining control of the Detained Petitioners, the U.S. military has held them virtually *incommunicado*.

32. Upon information and belief, the Detained Petitioners have been or will be interrogated repeatedly by agents of the U.S. Departments of Defense and Justice and the Central Intelligence Agency, although they have not been charged with an offense and have not been notified of any pending or contemplated charges. They have not appeared before a lawful military or civilian tribunal and have not been provided access to counsel or the means to contact and secure counsel. They have not been adequately informed of their rights under the U.S. Constitution, U.S. Military regulations, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, the 1954 Convention Relating to the Status of Refugees, or customary international law. Indeed, Respondents have taken the position that the Detained Petitioners should not be informed of these rights. As a result, the Detained Petitioners lack any ability to protect or to vindicate their rights under domestic and international law.

33. Upon information and belief, the Detained Petitioners have been forced to provide involuntary statements to Respondents' agents at Guantánamo.

34. Upon information and belief, the Detained Petitioners have been and will continue to be held under conditions that violate their constitutional, treaty, and international rights to dignity and freedom from torture and from cruel, inhuman, and degrading treatment or punishment.³

³ See, e.g., Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 83-115, Ch. 12-13, AMR 51/063/2005 (13 May 2005); Physicians for Human Rights, "Break Them Down: Systematic Use of Psychological Torture by US Forces," Ch.3 (2005); United Nations Press Release, "United Nations Human Rights Experts Express Continued Concern About Situation of Guantánamo Bay Detainees," Feb. 4, 2005; International Committee of the Red Cross, Press Release, "The ICRC's Work at Guantánamo Bay," Nov. 30, 2004; International Committee of the Red Cross, Operational Update, "US Detention Related to the Events of September 11, 2001 and Its Aftermath - the Role of the ICRC," July 26, 2004; Amnesty International, *United States of America: Human Dignity Denied: Torture and Accountability in the 'War on Terror'*, at 22 (Oct. 27, 2004) (available at <http://web.amnesty.org/library/Index/ENGAMR.511452004>); see also Barry C. (continued...)

35. Indeed, many of these violations – including isolation for up to 30 days, 28-hour interrogations, extreme and prolonged stress positions, sleep deprivation, sensory assaults, removal of clothing, hooding, and the use of dogs to create anxiety and terror – were actually interrogation techniques approved for use at Guantánamo by the most senior Department of Defense lawyer.⁴

36. In a confidential report to the U.S. Government, the International Committee of the Red Cross (“ICRC”) charged the U.S. military with intentional use of psychological and physical coercion on prisoners at Guantánamo during interrogations that is “tantamount to torture.”⁵ The report includes claims that doctors and other medical workers at Guantánamo participated in planning for interrogations.⁶

37. Since details of the ICRC’s report emerged, new revelations of abuse and torture at Guantánamo have appeared, including Federal Bureau of Investigation memos detailing torture and “highly aggressive interrogation techniques,” including twenty-four (or more) hour

Scheck, *Abuse of Detainees at Guantanamo Bay*, The Nat’l Assoc. of Criminal Defense Lawyers Champion, Nov. 2004, at 4-5.

⁴ See, e.g., Action Memo from William J. Haynes II, General Counsel, DOD, to Secretary of Defense (Nov. 27, 2002); *Pentagon Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy and Operational Considerations*, at 62-65 (Apr. 4, 2003). Additional details of the cruel and degrading conditions suffered by detainees at Guantanamo are set out at length in a statement by numerous released British detainees. See Shafiq Rasul, Asif Iqbal & Rhuhel Ahmed, *Composite Statement: Detention in Afghanistan and Guantanamo Bay*, 300, at http://www.ccr-ny.org/v2/reports/docs/Gitmo-compositestatementFINAL23_july04.pdf. The Department of Defense also informed the Associated Press that a number of interrogators at Guantanamo have been demoted or reprimanded after investigations into accusations of abuse at the facility. See *Report Details Guantanamo Abuses*, Assoc. Press, Nov. 4, 2004.

⁵ See Neil A. Lewis, “Red Cross Finds Detainee Abuse in Guantánamo,” *New York Times*, Nov. 30, 2004, at A1.

⁶ *Id.*; see also M. Gregg Bloche and Jonathan H. Marks, “When Doctors Go to War,” *New England Journal of Medicine*, Jan. 6, 2005, at 3-4.

interrogations involving beatings, temperature extremes, dogs, prolonged isolation, and loud music.⁷

38. In addition, the Associated Press has reported allegations that female Guantánamo interrogators have used sexual taunting, including smearing fake menstrual blood on a detainee's face, to try to break Muslim detainees.⁸

39. In fact, some of the well-publicized and egregious interrogation techniques used in the Abu Ghraib torture incidents – such as aggressive use of dogs, sexual humiliation, stress positions and sense deprivation – were pioneered at Guantánamo.⁹

40. The unlawful and unconstitutional interrogation techniques used by Respondents at Guantánamo include not only physical and psychological abuse but also other impermissible conduct contrary to due process requirements, including, upon information and belief, having agents of the U.S. Government present themselves as lawyers for the detainees during meetings with the detainees for the purpose of extracting information from the detainees.¹⁰ Moreover,

⁷ See, e.g., Carol D. Leonnig, "Guantanamo Detainee Says Beating Injured Spine; Now in Wheelchair, Egyptian-Born Teacher Objects to Plan to Send Him to Native Land," *Wash. Post*, Aug. 13, 2005, at A18; Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 83-115, Ch. 12-13, AMR 51/063/2005 (13 May 2005); *Guantánamo: An Icon of Lawlessness*, Amnesty International, Jan. 6, 2005, at 3-5; see also Neil A. Lewis, "Fresh Details Emerge on Harsh Methods at Guantánamo," *New York Times*, Jan. 1, 2005, at A11; Carol D. Leonnig, "Further Detainee Abuse Alleged; Guantánamo Prison Cited in FBI Memos," *Washington Post*, Dec. 26, 2004, at A1; Neil A. Lewis and David Johnston, "New F.B.I. Memos Describe Abuses of Iraq Inmates," *New York Times*, Dec. 21, 2004, at A1; Dan Eggen and R. Jeffrey Smith, "FBI Agents Allege Abuse of Detainees at Guantánamo Bay," *Washington Post*, Dec. 21, 2004, at A1; Neil A. Lewis, "F.B.I. Memos Criticized Practices at Guantánamo," *New York Times*, Dec. 7, 2004, at A19.

⁸ Associated Press, *Gitmo Soldier Details Sexual Tactics*, Jan. 27, 2005; and see Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 89-90, Ch. 12, AMR 51/063/2005 (13 May 2005).

⁹ See Josh White, "Abu Ghraib Dog Tactics Came From Guantanamo; Testimony Further Links Procedures at 2 Facilities," *Wash. Post*, July 27, 2005, at A14; and Josh White, "Abu Ghraib Tactics Were First Used at Guantanamo," *Wash. Post*, July 14, 2005 at A1.

¹⁰ See Sam Hannel, "Lawyers Describe Guantánamo Detainees," *Seattle Post-Intelligencer*, Jan. 19, 2005.

military defense lawyers have been instructed to materially limit their representation disfavorably to their detainee clients in violation of due process.¹¹

41. Respondents, acting individually or through their agents, have stated that limitations normally applicable to coercive interrogation techniques used by U.S. military officials under the auspices of the Department of Defense, *do not apply* to interrogations conducted by agents of the Central Intelligence Agency or other entities under President Bush.¹²

42. In published statements, Respondents Bush and Rumsfeld, and predecessors of Respondents Hood and Bumgarner, respectively, Lenhert and Carrico, have proclaimed that the United States may hold detainees at Guantánamo under their current conditions indefinitely.¹³ According to the Department of Defense, detainees who are adjudged innocent of all charges by a military commission may nevertheless be kept in detention at Guantánamo indefinitely.¹⁴ Counsel for Respondents have also consistently maintained that the United States may hold the

¹¹ See David Johnston & Neil Lewis, "Lawyer Says Military Tried To Coerce Detainee's Plea," *NY Times*, June 16, 2005 at A25 (Late Ed.).

¹² See e.g., Amnesty International, "Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power," at 27-43, Ch. 5, AMR 51/063/2005 (13 May 2005); Eric Lichtblau, "Gonzales Says '02 Policy on Detainees Doesn't Bind CIA," *New York Times*, Jan. 19, 2005, at A17; Dan Eggen and Charles Babington, "Torture by U.S. Personnel Illegal, Gonzales Tells Senate," *Washington Post*, Jan. 18, 2005, at A4.

¹³ See, e.g., Roland Watson, *The Times* (London), Jan. 18, 2002 ("Donald Rumsfeld, the U.S. Defense Secretary, suggested last night that Al-Qaeda prisoners could be held indefinitely at the base. He said that the detention of some would be open-ended as the United States tried to build a case against them."); Lynne Sladky, Assoc. Press, Jan. 22, 2002 ("Marine Brig. Gen. Mike Lehnert, who is in charge of the detention mission, defended the temporary cells where detainees are being held [...] 'We have to look at Camp X-ray as a work in progress [...] 'Lehnert told CNN. Lehnert said plans are to build a more permanent prison 'exactly in accordance with federal prison standards"); John Mintz, "Extended Detention in Cuba Mulled," *The Washington Post*, February 13, 2002. ("As the Bush Administration nears completion of new rules for conducting military trials of foreign detainees, U.S. officials say they envision the naval base at Guantanamo Bay, Cuba, as a site for the tribunals and as a terrorist penal colony for many years to come.").

¹⁴ See Department of Defense Press Background Briefing of July 3, 2003, at <http://www.defenselink.mil/transcripts/2003/tr20030703-0323.html> (last visited August 24, 2005).

detained Petitioners under their current conditions indefinitely.¹⁵ In fact, Respondents have failed to release detainees even after they have been found to be non-enemy combatants by the Combatant Status Review Tribunals.¹⁶ The U.S. Government has also recently acknowledged plans to begin constructing a new, more permanent facility at Guantánamo.¹⁷

Rendition

43. During interrogations, detainees also have been threatened with rendition or transfer to countries that permit indefinite detention without charge or trial and/or routinely practice torture. Upon information and belief, the United States has secretly transferred detainees to such countries without complying with the applicable legal requirements for extradition. This practice, known as “extraordinary rendition,” is used to facilitate interrogation by subjecting detainees to torture.¹⁸

44. The U.S. Government’s practice of extraordinary rendition has been well documented by American and international news organizations, including, *inter alia*, the *Washington Post*, *The Los Angeles Times*, and the British Broadcasting Corporation (the “BBC”). According to news accounts:

Since September 11, the U.S. government has secretly transported dozens of people suspected of links to terrorists to countries other than the United States bypassing extradition procedures and legal formalities, according to Western diplomats and intelligence source. The suspects have been taken

¹⁵ *In re Guantánamo Detainee Cases*, Nos. 02-CV-0299 (CKK), *et al.*, (D.D.C.), Tr. of Dec. 1, 2004 Oral Argument on Motion to Dismiss at 22-24, statements of Principle Deputy Associate Att’y Gen. Brian Boyle; *see also* Dana Priest, “Long-Term Plan Sought for Terror Suspects,” *Wash. Post*, Jan. 2, 2005, at A1.

¹⁶ *See* Robin Wright, “Chinese Detainees Are Men Without a Country; 15 Muslims, Cleared of Terrorism Charges, Remain at Guantanamo With Nowhere to Go,” *Wash. Post*, August 24, 2005, at A1 (Final Ed.); *and* Ben Fox, “U.S. to Ease Conditions for Some Detainees,” *Chicago Trib.*, Aug. 11, 2005 at C4.

¹⁷ Christopher Cooper, “In Guantánamo, Prisoners Languish in a Sea of Red Tape,” *Wall Street Journal*, Jan. 26, 2005, at A1; Associated Press, “Guantánamo Takes on the Look of Permanency,” Jan. 9, 2005.

¹⁸ *See* Jane Mayer, “Outsourcing Torture: The Secret History of American’s “Extraordinary Rendition” Program, *The New Yorker*, Feb. 14, 2005, at 106.

to countries . . . whose intelligence services have close ties to the CIA and where they can be subjected to interrogation tactics -- including torture and threats to families -- that are illegal in the United States, the sources said. In some cases, U.S. intelligence agents remain closely involved in the interrogations, the sources said.¹⁹

45. In fact, the U.S. Government has recently announced its intention to render many Guantánamo detainees to countries which have a poor record of respecting human rights and which engage in torture.²⁰ Moreover, upon belief and information, the Government is conditioning such rendering of detainees to their home countries on the requirement that the home country imprison the detainee, without regard to the detainee's individual factual or legal situation.²¹ Upon information and belief, Petitioners are at risk of being rendered, expelled or returned without lawful procedures to a country that engages in torture during interrogations and incarceration.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(COMMON LAW DUE PROCESS AND DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES - UNLAWFUL DEPRIVATION OF LIBERTY)

¹⁹ Rajiv Chanrasekaran & Peter Finn, "U.S. Behind Secret Transfer of Terror Suspects," *Wash. Post*, Mar. 11, 2002, at A1; *see also* Dana Priest, "Long Term Plan Sought for Terror Suspects," *Wash. Post*, Jan. 2, 2005, at A1 ("The transfers, called 'renditions,' depend on arrangements between the United States and other countries, such as Egypt . . . , that agree to have local security services hold certain suspects in their facilities for interrogation by CIA and foreign liaison officers.").

²⁰ *See e.g.*, Matthew Waxman, "Beyond Guantanamo," *Wash. Times*, Aug. 20, 2005, at A17; Robin Wright and Josh White, "U.S. Holding Talks on Return of Detainees; Administration Close to Reaching Agreements With 10 Muslim Governments," *Wash. Times*, August 9, 2005, at A13; Neil Lewis, "Guantanamo Detention Site Is Being Transformed, U.S. Says," *NY Times*, August 6, 2005, at A8 (Late Ed.); Paul Richter, "U.S. to Repatriate 110 Afghans Jailed at Guantanamo Bay," *LA Times*, Aug. 5, 2005 at A18.

²¹ *See* Robin Wright and Josh White, "U.S. Holding Talks on Return of Detainees; Administration Close to Reaching Agreements With 10 Muslim Governments," *Wash. Post*, August 9, 2005, at A13; BBC Worldwide Monitoring, "USA to release 107 Yemenis from Guantanamo Bay," August 10, 2005 (available from LEXIS, MWP90 file) ("The US authorities declared few days ago that they would extradite detainees from Guantanamo Bay to Afghanistan, Saudi Arabia and Yemen on the condition [that they are] to be put in jail.").

46. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

47. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the common law principles of due process as well the Due Process Clause of the Fifth Amendment to the Constitution of the United States. President Bush has ordered the prolonged, indefinite, and arbitrary detention of individuals, without due process of law, and the remaining Respondents have implemented those orders. Respondents' actions deny the Detained Petitioners the process accorded to persons seized and detained by the U.S. military in times of armed conflict as established by, *inter alia*, the Uniform Code of Military Justice, Army Regulation 190-8, Articles 3 and 5 of the Third and Fourth Geneva Conventions, and customary international law as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

48. To the extent that the Detained Petitioners' detention purports to be authorized by the Executive Order, that Order violates the Fifth Amendment on its face and as applied to the Detained Petitioners and, therefore, also violates 28 U.S.C. § 2241(c)(3).

49. To the extent that the Detained Petitioners' detention is under or by color of the authority of the United States it is without basis in law, and violates the common law principles of due process embodied in 28 U.S.C. § 2241(c)(1), the Detained Petitioners' detention is unlawful.

50. Accordingly, the Detained Petitioners are entitled to habeas, declaratory, and injunctive relief, as well as any other relief the court may deem appropriate.

SECOND CLAIM FOR RELIEF
(DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF
THE UNITED STATES - UNLAWFUL CONDITIONS OF CONFINEMENT)

51. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

52. By the actions described above, Respondents, acting under color of law, have violated and continue to violate the right of the Detained Petitioners to be free from unlawful conditions of confinement in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.

53. Accordingly, Detained Petitioners are entitled to declaratory and injunctive relief as well as any other relief the court may deem appropriate.

THIRD CLAIM FOR RELIEF
(GENEVA CONVENTIONS - ARBITRARY DENIAL OF DUE PROCESS)

54. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

55. By the actions described above, Respondents, acting under color of law, have denied and continue to deny the Detained Petitioners the process accorded to persons seized and detained by the U.S. military in times of armed conflict as established by specific provisions of the Third and Fourth Geneva Conventions.

56. Violations of the Geneva Conventions are direct treaty violations and are also violations of customary international law, and constitute an enforceable claim under 28 U.S.C. § 2241(c)(3).

57. Respondents are liable for this conduct described above insofar as they set the conditions, directly and/or indirectly facilitated, ordered, acquiesced, confirmed, ratified, and/or conspired to violate the Geneva Conventions.

58. Accordingly, the Detained Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FOURTH CLAIM FOR RELIEF
(INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW -
ARBITRARY DENIAL OF DUE PROCESS)

59. Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

60. By the actions described above, Respondents have denied and continue to deny the Detained Petitioners the due process accorded to persons seized and detained by the U.S. military in times of armed conflict as established by customary international humanitarian and human rights law as reflected, expressed, and defined in multilateral treaties and other international instruments, domestic judicial decisions, and other authorities.

61. Accordingly, the Detained Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FIFTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE - TORTURE)

62. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

63. By the actions described above, Respondents directed, ordered, confirmed, ratified, and/or conspired to bring about acts that deliberately and intentionally inflicted severe physical and psychological abuse and agony upon the Detained Petitioners in order to obtain coerced information or confessions from them, punish or intimidate them, or for other purposes. Among other abuses, upon information and belief, the Detained Petitioners have been held in conditions of isolation; placed in constant vulnerability to repeated interrogation and severe beatings; kept in cages with no privacy; shackled with heavy chains and irons; placed in solitary

confinement for minor rule infractions for prolonged periods of time; interrogated while shackled and chained in painful positions; exposed to extremes of temperature; subjected to violent behavior or the threat of violence; threatened with rendition to countries that practice torture; sexually humiliated; denied access to counsel and family; deprived of adequate medical care; and subjected to repeated psychological abuse.

64. The acts described herein constitute torture in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting torture as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

65. Respondents are liable for said conduct because they directed, ordered, confirmed, ratified, and/or conspired together and with others to commit the acts of torture against Detained Petitioners.

66. Detained Petitioners were forced to suffer severe physical and psychological abuse and agony and are entitled to habeas, declaratory, and injunctive relief, and other relief to be determined at trial.

SIXTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE - WAR CRIMES)

67. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

68. By the actions described above, Respondents' acts directing, ordering, confirming, ratifying, and/or conspiring to bring about the torture and other inhumane treatment of the Detained Petitioners constitutes war crimes and/or crimes against humanity in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated, among others, the Fourth Geneva Convention, Common Article III of the Geneva Conventions,

and Additional Protocols I and II of the Geneva Conventions as well as customary international law prohibiting war crimes as reflected, expressed, and defined in other multilateral treaties and international instruments, international and domestic judicial decisions, and other authorities.

69. As a result of Respondents' unlawful conduct, the Detained Petitioners have been and are forced to suffer severe physical and psychological abuse and agony and are, therefore, entitled to habeas, declaratory, and injunctive relief as well as other relief that the court may deem appropriate.

SEVENTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE – CRUEL, INHUMAN OR DEGRADING TREATMENT)

70. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

71. The acts described herein had the intent and the effect of grossly humiliating and debasing Detained Petitioners, forcing them to act against their will and conscience, inciting fear and anguish, and breaking their physical or moral resistance.

72. The acts described herein constitute cruel, inhuman, or degrading treatment in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting cruel, inhuman, or degrading treatment as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

73. Respondents are liable for said conduct in that they directed, ordered, confirmed, ratified, and/or conspired together and with others to cause the cruel, inhuman, or degrading treatment of Detained Petitioners.

74. Detained Petitioners were forced to suffer severe physical and psychological abuse and agony and are entitled to declaratory and injunctive relief as well as other relief to be determined at trial.

EIGHTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE -
ARBITRARY ARREST AND PROLONGED ARBITRARY DETENTION)

75. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

76. The acts described herein constitute arbitrary arrest and detention of the Detained Petitioners in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

77. Respondents are liable for said conduct in that they directed, ordered, confirmed, ratified, and/or conspired together and with others to bring about the arbitrary arrest and prolonged arbitrary detention of the Detained Petitioners in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting arbitrary arrest and prolonged arbitrary detention as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

78. As a result of Respondents' unlawful conduct, the Detained Petitioners have been and are deprived of their freedom, separated from their families, and forced to suffer severe physical and mental abuse and are, therefore, entitled to habeas, declaratory, and injunctive relief as well as other relief that the court may deem appropriate.

NINTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE- ENFORCED DISAPPEARANCE)

79. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

80. By the actions described above, the Respondents directed, ordered, confirmed, ratified, and/or conspired to bring about the enforced disappearance of the Detained Petitioners in violation of the law of nations under the Alien Tort Statute, 28 U.S.C. § 1350, in that the acts violated customary international law prohibiting enforced disappearances as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

81. As a result of Respondents' unlawful conduct, the Detained Petitioners have been, and continue to be, deprived of their freedom, separated from their families, and forced to suffer severe physical and mental abuse and are, therefore, entitled to declaratory and injunctive relief as well as other relief that the court may deem appropriate.

TENTH CLAIM FOR RELIEF
(ARTICLE II OF THE UNITED STATES CONSTITUTION-
UNLAWFUL DETENTION)

82. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

83. Detained Petitioners are not, nor has they ever been, enemy aliens, lawful or unlawful belligerents, or combatants of any kind. The Executive lacks the authority to order or direct military officials to detain civilians who are seized far from the theater of war or occupied territory or who were not "carrying a weapon against American troops on a foreign battlefield." *Hamdi v. Rumsfeld*, 124 S. Ct. 2633, 2642 n.1 (2004).

84. By the actions described above, Respondent Bush has exceeded and continues to exceed the Executive's authority under Article II of the U.S. Constitution by authorizing, ordering, and directing that military officials seize the Detained Petitioners and transfer them to military detention and by authorizing and ordering their continued military detention at Guantánamo. All of the Respondents acted and continue to act without lawful authority by directing, ordering, and/or supervising the seizure and military detention of the Detained Petitioners.

85. The military seizure and detention of the Detained Petitioners by the Respondents is *ultra vires* and illegal because it violates Article II of the U.S. Constitution. To the extent that the Executive asserts that the Detained Petitioner's detention is authorized by the Executive Order, that Order exceeds the Executive's authority under Article II and is *ultra vires* and void on its face and as applied to the Detained Petitioners.

86. To the extent that Respondents assert that their authority to detain the Detained Petitioners derives from a source other than the Executive Order, including without limitation the Executive's inherent authority to conduct foreign affairs or to serve as Commander-in-Chief of the U.S. Armed Forces, whether from Article II of the Constitution or otherwise, Respondents lack that authority as a matter of fact and law.

87. Accordingly, the Detained Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

ELEVENTH CLAIM FOR RELIEF
(VIOLATION OF THE APA - ARBITRARY AND CAPRICIOUS UNLAWFUL
DETENTION)

88. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

89. Army Regulation 190-8 prohibits the detention of civilians who were seized away from the field of battle or outside occupied territory or who were not engaged in combat against the United States. *See, e.g.*, Army Reg. 190-8 at 1-6(g) (“Persons who have been determined by a competent tribunal not to be entitled to prisoner of war status may not be executed, imprisoned, or otherwise penalized without further proceedings to determine what acts they have committed and what penalty should be imposed.”).

90. By arbitrarily and capriciously detaining the Detained Petitioners in military custody for over three years in the manner described above, Respondents have acted and continue to act *ultra vires* and unlawfully in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2).

91. Accordingly, the Detained Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

TWELFTH CLAIM FOR RELIEF
(VIOLATION OF THE APA - ARBITRARY AND CAPRICIOUS
DENIAL OF DUE PROCESS)

92. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

93. By the actions described above, Respondents, acting under color of law, have arbitrarily and capriciously denied and continue to deny the Detained Petitioners the process accorded to persons seized and detained by the U.S. military in times of armed conflict as established by Army Regulation 190-8 in violation of the Administrative Procedures Act, 5 U.S.C. § 706(2).

94. Accordingly, the Detained Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

THIRTEENTH CLAIM FOR RELIEF

(VIOLATION OF THE APA – TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT)

95. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

96. By the actions described above, the Respondents have acted and continue to act arbitrarily and capriciously by directing, ordering, confirming, ratifying, and/or conspiring to unlawfully subject Detained Petitioners to torture and/or cruel, inhuman, or degrading treatment in violation of Army Regulation 190-8 and the Administrative Procedures Act, 5 U.S.C. § 706(2).

97. Accordingly, the Detained Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FOURTEENTH CLAIM FOR RELIEF
(VIOLATION OF THE RIGHT TO COUNSEL AND TO ACCESS TO THE COURTS)

98. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

99. Respondents consistently have contrived to intrude upon the Detained Petitioners' right to consult with counsel by conditioning counsel's access to the Detained Petitioners on unreasonable terms, including classification/declassification procedures, all in violation of the Detained Petitioners' attorney-client privilege, their work product privilege, and the Fifth and Sixth Amendments to the U.S. Constitution.

100. Accordingly, Detained Petitioners are entitled to habeas, declaratory, and injunctive relief as well as any other relief the court may deem appropriate.

FIFTEENTH CLAIM FOR RELIEF
(DUE PROCESS CLAUSE - RENDITION)

101. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

102. Upon information and belief, Detained Petitioners are at risk of being rendered, expelled, or returned without lawful procedures to a country that engages in torture. The transfer of the Detained Petitioners to a country that creates a foreseeable and direct risk that they will be subjected to torture constitutes a violation of the Detained Petitioners' rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

103. Accordingly, Detained Petitioners are entitled to declaratory and injunctive relief as well as any other relief the court may deem appropriate.

SIXTEENTH CLAIM FOR RELIEF
(CONVENTION AGAINST TORTURE AND
CONVENTION RELATING TO THE STATUS OF REFUGEES - RENDITION)

104. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

105. Upon information and belief, Detained Petitioners are at risk of being rendered, expelled, or returned without lawful procedures to a country that engages in torture. The transfer of the Detained Petitioners to a country that creates a foreseeable and direct risk that they will be subjected to torture constitutes a direct violation of Detained Petitioners' rights under the Covenant Against Torture and the 1954 Convention Relating to the Status of Refugees, 19 U.S.T. 6259, 189 U.N.T.S. 150 *entered into force* Apr. 22, 1954.

106. Accordingly, the Detained Petitioners are entitled to declaratory and injunctive relief as well as any other relief the court may deem appropriate.

SEVENTEENTH CLAIM FOR RELIEF
(ALIEN TORT STATUTE- RENDITION)

107. Detained Petitioners incorporate by reference all preceding paragraphs as if set forth fully herein.

108. Upon information and belief, Detained Petitioners are at risk of being rendered, expelled, or returned without lawful procedures to a country that engages in torture. The transfer of the Detained Petitioners to a country that creates a foreseeable and direct risk that they will be subjected to torture constitutes a violation of the Detained Petitioners' rights under customary international law, which may be vindicated under the Alien Tort Statute.

109. Accordingly, the Detained Petitioners are entitled to declaratory and injunctive relief as well as any other relief the court may deem appropriate.

PRAYER FOR RELIEF

WHEREFORE, Detained Petitioners pray for relief as follows:

1. Grant Petitioner Hamid Ali Al Jayfi status as Next Friend of Issam Hamid Ali Bin Ali Al Jayfi;
2. Grant Petitioner Ali Mohammed Omar Al Shomrany status as Next Friend of Othman Ali Mohammed Al Shamrany;
3. Grand Petitioner Muhammed Ahmed Muhammed Al Ghurbany status as Next Friend of Khalid Mohammed Al Thabbi;
4. Grant Petitioner Abdoul Mohammed Ahmed Bahloul status as Next Friend of Ali Hamza Ahmed Suliman Bahloul;
5. Grant Petitioner Fatmah Qhasim Al Ahmadi status as Next Friend of Saleh Mohammed Seleh Al Thabbii;
6. Grant Petitioner Abdulgader Ahmed Hasin Abobaker status as Next Friend of Abdul Al Qader Ahmed Hussain;

7. Grant a Writ of Habeas Corpus with respect to each of the Detained Petitioners and order Respondents to release each from his current unlawful detention;

8. Order that each of the Detained Petitioners be brought before the Court or before a Magistrate Judge assigned by the Court to conduct proceedings under the supervision of the Court to vindicate his rights;

9. Order that each of the Detained Petitioners must not be transferred to any other country without the specific written agreement of the Detained Petitioner and/or his counsel while this action is pending;

10. Order that each of the Detained Petitioners must not be delivered, returned, or rendered to a country where there is a foreseeable and imminent risk that he will be subjected to torture;

11. Order Respondents to allow counsel to meet and confer with each of the Detained Petitioners in private and unmonitored attorney-client conversations;

12. Order Respondents to cease all direct or indirect interrogations of any of the Detained Petitioners while this litigation is pending;

13. Order Respondents to cease all acts of torture and cruel, inhuman, and degrading treatment of Detained Petitioners;

14. Order and declare the Executive Order of November 13, 2001 is *ultra vires* and unlawful in violation of Article II of the United States Constitution, the Fifth Amendment to the U.S. Constitution, the Uniform Code of Military Justice, the Administrative Procedures Act, 5 U.S.C. § 702, the treaties of the United States, and customary international law;

15. Order and declare that the prolonged, indefinite, and restrictive detention of the Detained Petitioners without due process is arbitrary and unlawful and a deprivation of liberty

16. Grant such other relief as the Court may deem necessary and appropriate to protect the Detained Petitioners' rights under the common law, the U.S. Constitution, federal statutory law, and international law.

Respectfully submitted,

Counsel for Petitioners/Plaintiffs:



Wesley R. Powell (WP7857)
Patrick Train-Gutiérrez
HUNTON & WILLIAMS LLP
200 Park Avenue
New York, NY 100166
(212) 309-1000
(212) 309-1100 (facsimile)

Thomas R. Snider
HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 955-1500
(202) 778-2201 (facsimile)

Of Counsel

Barbara J. Olshansky
Director Counsel
Tina Monshipour Foster
Gitanjali S. Gutierrez
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
Tel: (212) 614-6439
Fax: (212) 614-6499

October 27, 2005

CERTIFICATE OF REPRESENTATION WITHOUT COMPENSATION

Counsel for Detained Petitioners, pursuant to L.Cv. R. 83.2(g), that they are representing the Detained Petitioners without compensation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Wesley R. Powell", is written over a horizontal line.

Wesley R. Powell (WP7857)
Patrick Train-Gutiérrez
HUNTON & WILLIAMS LLP
200 Park Avenue
New York, NY 100166
(212) 309-1000
(212) 309-1100 (facsimile)

Thomas R. Snider
HUNTON & WILLIAMS LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 955-1500
(202) 778-2201 (facsimile)

October 27, 2005

NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURT

Civil Action No. _____
(To be supplied by the Clerk)

NOTICE TO PARTIES:

Pursuant to Rule 405(b)(2), you are required to prepare and submit this form at the time of filing any civil action which is related to any pending cases or which involves the same parties and relates to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk's records, one copy for the Judge to whom the cases is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 405(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rule 405(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff, defendant or counsel must complete the following:

1. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(es) below.]

- ☐ (a) relates to common property
- ☐ (b) involves common issues of fact
- ☒ (c) grows out of the same event or transaction
- ☐ (d) involves the validity or infringement of the same patent
- ☐ (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(ES)

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and same subject matter.

Check box if new case is related to a dismissed case: ☐

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):

4. CAPTION AND CASE NUMBER OF RELATED CASE(ES). IF MORE ROOM IS NEED PLEASE USE OTHER SIDE.

ABDULAZIZ ABDULRAHMAN ALBADAH, et al. v. GEORGE W. BUSH, et al C.A. No. 1:05CV 01641 (CKK)

10/26/05
DATE

Wahy R. Paul
Signature of Plaintiff/Defendant (or counsel)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| SHAFIQ RASUL, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 02-299 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| KHALED A.F. AL ODAH, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 02-828 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| MAMDOUH HABIB, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 02-1130 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| NIZAR SASSI, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 04-547 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
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| Defendants. | : | |

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| MURAT KURNAZ, <i>et al.</i>, | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 04-1135 (ESH) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
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| OMAR KHADR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 04-1136 (JDB) |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
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| MOAZZAM BEGG, <i>et al.</i>, | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 04-1137 (RMC) |
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| GEORGE W. BUSH, <i>et al.</i>, | : | |
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| Defendants. | : | |
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| MOURAD BENCHELLALI, <i>et al.</i>, | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 04-1142 (RJL) |
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| GEORGE W. BUSH, <i>et al.</i>, | : | |
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| Defendants. | : | |

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| JAMIL EL-BANNA, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
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| v. | : | Civil Action No. 04-1144 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
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| Defendants. | : | |
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| FALEN GHEREBI, | : | |
| | : | |
| Plaintiff, | : | |
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| v. | : | Civil Action No. 04-1164 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
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| Defendants. | : | |
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| LAKHDAR BOUMEDIENE, <i>et al.</i> , | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 04-1166 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| SUHAIL ABDU ANAM, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 04-1194 (HHK) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| ISA ALI ABDULLA ALMUBATI, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
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| v. | : | Civil Action No. 04-1227 (RBW) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| MOHMOAD ABDAH, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 04-1254 (HHK) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| CHARLES SWIFT, as Next Friend for | : | |
| SALIM AHMED HAMDAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 04-1519 (JR) |
| | : | |
| DONALD H. RUMSFELD, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| RICHARD BELMAR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 04-1897 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

**IBRAHIM AHMED MAHMOUDAL
QOSI,**

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

SAIFULLAH PARACHA,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

JARALLAH AL-MARRI,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

AHCENE ZEMIRI,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 04-1937 (PLF)

Civil Action No. 04-2022 (PLF)

Civil Action No. 04-2035 (GK)

Civil Action No. 04-2046 (CKK)

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| OMAR DEGHAYES, <i>et al.</i> , | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 04-2215 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| KHALED BEN MUSTAPHA, <i>et al.</i> , | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-22 (JR) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| HANI SALEH RASHID ABDULLAH, | : | |
| <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-23 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| MAHMOOD SALIM AL MOHAMMED, | : | |
| <i>et al.</i> , | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-247 (GK) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| SHERIF EL-MASHAD, <i>et al.</i> , | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-270 (JR) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| MOHAMMED AL-ADAH, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-280 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| MAJID ABDULLA AL JOUDI, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-301 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| JOHN DOES 1-570, | : | |
| | : | |
| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-313 (CKK) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| AHMED ABDULLAH-WAZAN, | : | |
| | : | |
| Plaintiff, | : | |
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| v. | : | Civil Action No. 05-329 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
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| Defendants. | : | |
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| ABDULA THANI FARIS AL-ANAZI, | : | |
| <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-345 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| RAFIQ BIN BASHIR BIN JALLUL | : | |
| ALHAMI, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-359 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| DJAMEL AMEZIANE, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-392 (ESH) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| AYMEN SAEED BATARFI, | : | |
| | : | |
| Plaintiff, | : | |
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| v. | : | Civil Action No. 05-409 (EGS) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| HISHAM SLITI, <i>et al.</i> , | : | |
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| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-429 (RJL) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
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| Defendants. | : | |
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| M.C., | : | |
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| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-430 (ESH) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
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| USAMA HASAN ABU KABIR, <i>et al.</i> , | : | |
| | : | |
| Plaintiff, | : | |
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| v. | : | Civil Action No. 05-431 (RJL) |
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| GEORGE W. BUSH, <i>et al.</i> , | : | |
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| Defendants. | : | |

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| RASHID ABDUL MOSLEH QAYED, | : | |
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| Plaintiff, | : | |
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| v. | : | Civil Action No. 05-454 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
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| ABDUL-SALAM GAITHAN MUREEF | : | |
| AL-SHIHRY, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-490 (PLF) |
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| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
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| AHAMED ABDUL-AZIZ, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-492 (JR) |
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| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
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| ABU BAKKER QASSIM, <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
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| v. | : | Civil Action No. 05-497 (JR) |
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| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | SALEH ABDULLAH AL-OSHAN, <i>et al.</i> , | : | |
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| | Plaintiff, | : | |
| | | : | |
| | v. | : | Civil Action No. 05-520 (RMU) |
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| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |
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| | MUHAMMED KHAN TUMANI, <i>et al.</i> , | : | |
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| | Plaintiffs, | : | |
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| | v. | : | Civil Action No. 05-526 (RMU) |
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| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |
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| | SULAIMAN SAAD MOHAAMED AL-OSHAN, | : | |
| | | : | |
| | Plaintiff, | : | |
| | | : | |
| | v. | : | Civil Action No. 05-533 (RJL) |
| | | : | |
| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |
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| | MAJID RADHI AL TOUME AL SHAMRI, | : | |
| | | : | |
| | Plaintiff, | : | |
| | | : | |
| | v. | : | Civil Action No. 05-551 (RWR) |
| | | : | |
| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |

MOHAMMEDOU OULD SALAHI,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-569 (JR)

AMEUR MAMMAR,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-573 (RJL)

ABDULRAZZAQ ABDULLA AL-SHAREKH, *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-583 (RJL)

MURTADHA ALI MAGRAM,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-584 (CKK)

**ABDULLAH IBRAHIM ABDULLAH
AL RASHAIDAN,**

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-586 (RWR)

WAHIDOF ABDUL MOKIT,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-621 (HHK)

OMER SAEED SALEM AL DAINI,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-634 (RWR)

AHMED ERRACHIDI, *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-640 (EGS)

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| <hr/> | : | |
| ABDUL SALAM ZAEFF, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-660 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| HAZI AHMED, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-665 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ELHAM BATTAYAV, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-714 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| SALIM MUHOOD ADEM, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-723 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | | |
| MOHSEN ABD RUB ABO ASSY, <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-748 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | | |
| ADEL HAMLILY, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-763 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | | |
| AHMED ABU IMRAN, <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-764 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | | |
| BENJAMIN MOHAMMED AL HABASHI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-765 (EGS) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

**ABDUL HADI IBN EL HATHILY
AL HAMAMY,**

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-766 (RJL)

**SOFIAN EBRAHIM HAMAD
HAMOODAH,**

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-795 (RJL)

ALLADEEN, *et al.*,

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-833 (JR)

KHIALI-GUL,

Plaintiff,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

Civil Action No. 05-877 (JR)

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| <hr/> | : | |
| RAHMATTULLAH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-878 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| TAJ MOHAMMAD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-879 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| HAJI NASRAT, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-880 (ESH) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MOHAMEDUO OULD SLAHI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-881 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | : | |
| FAZIL RAHMAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-882 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| KARIN BOSTAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-883 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MUhibullah, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-884 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ALIF MOHAMMAD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-885 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| ABDUL WAHAB, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-886 (EGS) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| CHAMAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-887 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| NAZUL GUL, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-888 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| YASIN MUHAMMED BASARDH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-889 (EGS) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | : | |
| SHARBAT KHAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-890 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| NASRULLAH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-891 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ALI HUSSIAN MUHAMMAD MUETY | : | |
| SHAABAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-892 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MOHAMMAD MUSTAFA SOHAIL, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-993 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | : | |
| KASIMBEKOV KOMOLIDDIN | : | |
| TOHIRJANOVICH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-994 (RCL) |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MOHAMEDOU OULD SLAHI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-995 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| AKHTEYAR MOHAMMAD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-996 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| KHUDAIDAD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-997 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| ARKAN MOHAMMAD GHAFIL | : | |
| AL KAAIM, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-998 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ASIM BEN THABIT AL-KHALAQI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-999 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABIB SARAJUDDIN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1000 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDULLA MOHAMMED KAHN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1001 (ESH) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| AKHTAR MOHAMMED, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1002 (EGS) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| HABIBULLAH MANGUT, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1008 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ADEL HASSAN HAMAD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1009 (RCL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MOHABAT KHAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1010 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | : | |
| ABDUL ZUHOOR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1011 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| SYED MUHAMMAD ALI SHAH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1012 (ESH) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDUL SALAAM, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1013 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDULSALAM ALI ABDULRAHMAN | : | |
| AL-HELA, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1048 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| ALI SHAH MOUSOVI, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1124 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| OMAR MOHAMMED KHALIFH, | : | |
| <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1189 (HHK) |
| | : | |
| <hr/> | : | |
| ABU ABDUL RAUF ZALITA, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1220 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| AMEUR MAMMAR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1233 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| LABED AHMD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1234 (EGS) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDUL BAQI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1235 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDULZAHER, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1236 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| AMINULLAH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1237 (ESH) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| HAJJI GHALIB, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1238 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ALI ADEL MOTALEB AWEID | : | |
| AL KHAIY, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1239 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ALI ABDULMOTALIB AWEID | : | |
| HASSAN ALTAIY, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1240 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDUL HAKIM ABDUL KAARIN | : | |
| AMIN BUKHARI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1241 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| AHSANULLAH PIRZAI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1242 (RCL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| IHSAN ULLAH PEERZAI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1243 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| TARIQ MAHMOUD ALSAWAM, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1244 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDUL MAJID MOHAMMADI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1246 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| ABDULRAHIM ABDUL RAZAK | : | |
| AL GINCO, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1310 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| EHSAN ULLAH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1311 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| GHALEB NASSAR AL BIHANI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1312 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| FARHI SAEED BIN MOHAMMED, | : | |
| <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1347 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | : | |
| CYRUS KAR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1348 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MOTAI SAIB, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1353 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| SAEED MOHAMMED SALEH | : | |
| HATIM, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1429 (HHK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| NASSER MAZYAD ABDULLAH | : | |
| AL-SUBAIY, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1453 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| JIHAD DHIAB, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1457 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| AHMED “DOE,” | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1458 (ESH) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| JAWAD JABBER SADKHAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1487 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| FAIZULLAH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1489 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| FARAJ ABDL AL HADMI OMAR | : | |
| MAHOUD, | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1490 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| SAWAT KHAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1491 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDU AHMAD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1492 (RCL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MOHAMMED AMON, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1493 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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|-------|---------------------------------|---|--------------------------------|
| <hr/> | ADIL BIN MUHAMMAD AL WIRGHI, | : | |
| | | : | |
| | Plaintiff, | : | |
| | | : | |
| | v. | : | Civil Action No. 05-1497 (GK) |
| | | : | |
| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |
| <hr/> | NABIL (LAST NAME UNKNOWN), | : | |
| | | : | |
| | Plaintiff, | : | |
| | | : | |
| | v. | : | Civil Action No. 05-1504 (RMC) |
| | | : | |
| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |
| <hr/> | ABBAR SUFIAN AL HAWARY, | : | |
| | | : | |
| | Plaintiff, | : | |
| | | : | |
| | v. | : | Civil Action No. 05-1505 (RMC) |
| | | : | |
| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |
| <hr/> | SHAFIQ (LAST NAME UNKNOWN), | : | |
| | | : | |
| | Plaintiff, | : | |
| | | : | |
| | v. | : | Civil Action No. 05-1506 (RMC) |
| | | : | |
| | GEORGE W. BUSH, <i>et al.</i> , | : | |
| | | : | |
| | Defendants. | : | |

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| <hr/> | : | |
| JAMAL KIYEMBA, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1509 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| IBRAHIM OSMAN IBRAHIM IDRIS, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1555 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDUL HADI OMER HAMOUD FARAJ, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1590 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| HASSAN BIN ATTASH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1592 (HHK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | : | |
| HAMID AL RAZAK, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1601 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| EDHAM MAMET, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1602 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDUL RAHEEM GHULAM | : | |
| RABBANI, <i>et al.</i>, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1607 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDUL ZAHIR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1623 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| <hr/> | : | |
| MOHAMMAD AKHTIAR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1635 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MOHAMMED RAJEB ABU | : | |
| GHANEM, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1638 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| AMEEN MOHAMMAD ALBKRI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1639 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDULAZIZ ABDULRAHMAN | : | |
| AL-BADAH, <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1641 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| HUSSAIN SALEM MOHAMMED, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1645 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| WALEED SAEED BNSAEED ZAID, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1646 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| HUSSEIN SALEM MOHAMMAD | : | |
| ABDULLAH EL-MARQODI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1649 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ZEIAD SALEH AL BAHOOOTH, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1666 (ESH) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| ABDALHADI M. AL-SOPAI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1667 (RBW) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| RASHID AWAD AL AWEDA, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1668 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| FAHAD SALEH ALGATEL, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1669 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ALLA ALI BIN ALI AHMED, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1678 (GK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| JAWAD JABBAR SADKHAN | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1679 (RJL) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| KADEER KHANDAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1697 (PLF) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| USAMA HASAN ABU KABIR, <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1704 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| YOUSIF ABDULLAH AL-RUBAISH,; | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1714 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| SALIM MOHAMMED ADAM BIN | : | |
| AMIR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1724 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABRAHIM OTHMAN ABRAHIM | : | |
| EDRIES, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1725 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| MUHAMMED QASIM, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1779 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
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| ABDANNOUR SAMEUR, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1806 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| MAZIN SALIH AL-HARBI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1857 (CKK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABU ABDUL AZIZ, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1864 (HHK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| AYOUB HAJI MAMET, <i>et al.</i> , | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1886 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| FAWAZ NAMAN HAMOUD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1894 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

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| MOHAMMED AL-QAHTANI, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-1971 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ISMAIL ALKHEMISI, <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-1983 (RMU) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| RAVIL MINGAZA GAMIL, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-2010 (JR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| BENDER AYED HAMOUD HEZAM | : | |
| AL-OTEIBI AL-SHABANY, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-2029 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| ZAKIRJAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-2053 (HHK) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABDULKADR ABDULKHALIK DAD, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-2083 (JDB) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| ABU MUHAMMED, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-2087 (RMC) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| <hr/> | : | |
| KHALED ADB ELGABAR | : | |
| MOHAMMED OTHMAN, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Civil Action No. 05-2088 (RWR) |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |

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| ISSAM HAMID ALI BIN ALI | : | |
| ALJAYFI, <i>et al.</i>, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | |
| v. | : | Civil Action No. 05-2104 (CKK)\ |
| | : | |
| GEORGE W. BUSH, <i>et al.</i>, | : | |
| | : | |
| Defendants. | : | |
| | : | |

ORDER

Whereas the Calendar and Case Management Committee of the United States District Court for the District of Columbia recognizes the need to promote the orderly and efficient case management of all habeas petitions that are presently pending or will be filed in this Court relating to the rights of detainees held at the United States Naval Base at Guantanamo Base, Cuba, as well as avoid unnecessary duplication of effort, and in the interests of resolving logistical problems as quickly and satisfactorily as possible, the following case management plan is implemented pursuant to the Committee's authority under LCvR 40.5(e):

1. Effective as of the date of this Order, all Motions pertaining to interpretation or construction of any protective order which has been entered in any of the above-cited cases, shall be referred to Magistrate Judge Alan Kay pursuant to LCvR 72.2(a).

2. Effective as of the date of this Order, all disputes pertaining to logistical issues, such as communications with or visits to clients and counsel, shall be referred to Magistrate Judge Kay to facilitate discussion and resolution by the parties as promptly as possible.

/s/
Gladys Kessler, Chair
Calendar and Case Management Committee

November 2, 2005

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.


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Case No. 1:05-CV-02104 (RBW)

**MOTION FOR THE IMMEDIATE ISSUANCE
OF WRITS OF *HABEAS CORPUS* PURSUANT TO 28 U.S.C. § 2243 OR,
ALTERNATIVELY, TO ISSUE AN ORDER TO SHOW CAUSE**

Petitioners Issam Hamid Ali Bin Ali Al Jayfi, Othman Ali Mohammed Al Shamrany, Khalid Mohammed Al Thabbi, Ali Hamza Ahmed Suliman Bahlool, Saleh Mohammed Seleh Al Thabbii and Abdu Al Qader Ahmed Hussain (“Detained Petitioners”), together with their respective Next Friends as co-Petitioners, by and through undersigned counsel, respectfully submit this motion requesting the Court to issue forthwith writs of *habeas corpus* pursuant to 28 U.S.C. § 2242, returnable in three days, in order to proceed to a hearing on the merits of their jointly-filed Petition for Writs of Habeas Corpus. Alternatively, the Detained Petitioners seek forthwith the issuance of an order to show cause why writs of *habeas corpus* should not be granted, returnable in three days. The grounds for this motion are contained in the memorandum of points and authorities that accompanies this motion.

Respectfully submitted,
Counsel for Petitioners:



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Of Counsel

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Director Counsel
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Gitanjali S. Gutierrez (GG1234)
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
Tel: (212) 614-6439
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November 4, 2005

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PETITIONERS' MOTION FOR A WRIT OF HABEAS CORPUS OR AN ORDER
TO SHOW CAUSE PURSUANT TO 28 U.S.C. § 2243**

Petitioners Issam Hamid Ali Bin Ali Al Jayfi, Othman Ali Mohammed Al Shamrany, Khalid Mohammed Al Thabbi, Ali Hamza Ahmed Suliman Bahlool, Saleh Mohammed Seleh Al Thabbii and Abdu Al Qader Ahmed Hussain (collectively, "Detained Petitioners"), acting through their Next Friends, and in support of their motion requesting immediate issuance of writs of habeas corpus or an order to show cause why writs should not be granted with respect to each Detained Petitioner, returnable by Respondents on November 8, 2005, state the following:

1. Upon information and belief, Detained Petitioners are prisoners at the United States Naval Station at Guantánamo Bay, Cuba ("Guantánamo"). They have been imprisoned by the United States for more than three years. During this entire time, they have been held virtually *incommunicado* and without access to counsel.

2. On October 27, 2005, undersigned counsel filed a Petition for Writs of Habeas Corpus ("Petition") on behalf of Detained Petitioners pursuant to 28 U.S.C. § 2241 and 2242, contending that Petitioners are being detained in violation of the Constitution, laws and treaties of the United States, and in violation of international law.

3. As set forth in their Petition at ¶¶ 13-15, Detained Petitioners are not, nor have they ever been, “enemy combatants” within the meaning established pursuant to a Military Order issued by President Bush on November 13, 2001, *see* Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57, 833 (Nov. 13, 2001), or as set forth in *Hamdi v. Rumsfeld*, 124 S. Ct. 2633, 2639 (2004).

4. The United States Supreme Court has acknowledged that allegations such as those contained within Detained Petitioners’ application for habeas relief – specifically, claims of innocence from any wrongdoing and detention without charge or access to counsel – “unquestionably describe ‘custody in violation of the Constitution or laws or treaties of the United States.’” *Rasul v. Bush*, 124 S. Ct. 2686, 2698 n. 15 (2004) (quoting 28 U.S.C. § 2241 (c)(3)).

5. Accordingly, the Supreme Court determined that Detained Petitioners are entitled to challenge their incarceration through an application for the Great Writ. *Rasul*, 124 S. Ct. at 2699 (upholding the jurisdiction of federal courts “to determine the legality of the Executive’s potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing”).

6. Pursuant to 28 U.S.C. § 2243, ¶ 1, a “court. . . entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.”

7. Pursuant to 28 U.S.C. § 2243, ¶ 2, the writ or order to show cause “shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.”

8. Detained Petitioners request that the writ be issued or, alternatively, the order to show cause be granted, with a return date within three days.

9. Detained Petitioners seek to enforce their rights to a judicial determination whether there is a factual and/or legal basis for their imprisonment in Guantánamo.

10. Respondents have, by their own public admission, completed at least four factual reviews of Detained Petitioners' status and reasons for Detained Petitioners' ongoing imprisonment. *See* Briefing on Detainee Operations at Guantánamo Bay (February 13, 2004), available at <http://www.defenselink.mil/transcripts/2004/tr20040213-0443.html> (last visited Nov.1, 2005).

11. On information and belief, Respondents have also interrogated Detained Petitioners and are therefore aware of the factual bases that allegedly support their continued imprisonment. According to Deputy Secretary of Defense Paul Wolfowitz, each Petitioner "has been determined to be an enemy combatant through multiple levels of review by officers of the Department of Defense." Memorandum for the Secretary of the Navy, July 7, 2004, attached as Exh. A to the accompanying Declaration of Wesley R. Powell, Esq. ("Powell Decl."), at ¶ a.

12. These "multiple levels of review" involve at least three assessments by military personnel, civilian officials and legal advisors, including: (1) an initial combatant determination, (2) a General Officer Review, and (3) a Department of Defense Review. *See* Briefing on Detainee Operations at Guantánamo Bay, *supra*.

13. Furthermore, Respondents have, since July 2004, conducted hearings to review the status of each person incarcerated at Guantánamo. *See* Combatant Status Review Tribunals Update (January 19, 2005), available at <http://www.dod.mil/releases/2005/nr20050119->

1996.html (last visited Oct. 25, 2005); Combatant Status Tribunals Update Status Review (February 14, 2005), available at <http://www.defenselink.mil/news/Feb2005/d20050214csrt.pdf> (last visited Oct. 25, 2005). Each hearing, known as a Combatant Status Review Tribunal (“CSRT”), “reviews and assesses relevant and reasonably available documents about each detainee to make a determination to confirm or reclassify the status of each individual.” CSRT Update *supra*.

14. Upon information and belief, Respondents have conducted over 558 CSRTs since the process was implemented, *see* CSRT Update Status Review, *supra*, and Detained Petitioners are among the detainees for whom CSRTs have been conducted.

15. Because Respondents have already determined the alleged “enemy combatant” status of each prisoner through multiple levels of review and CSRTs, there is no reason to delay issuance of the writ or an order to show cause.

16. Recently declassified and released federal agency and military documents¹ have confirmed long reports that persons incarcerated at Guantánamo have been subject to widespread and systemic torture and abuses, including brutal beatings, *see, e.g.*, Exh. B to the Powell Decl. (translated interview of Guantánamo detainee, describing being “beaten unconscious” by guards); forced violations of fundamental tenets of faith through a deliberate pattern of torture targeted at devout Muslims, *see* Pet. at ¶ 38; sexual abuse, and routine degradation and humiliation. *See* Carol D. Leonnig and Dana Priest, *Detainees Accuse Female Interrogators:*

¹ These documents, referenced as Exhibits B through L to the Powell Declaration, were released pursuant to a court order, entered in litigation brought under the Freedom of Information Act (“FOIA”) by civil rights, humanitarian and veteran’s organizations. *See American Civil Liberties Union, et al. v. Department of Defense, et al.*, Docket No. 04-CV-4151 (AKH) (S.D.N.Y.).

Pentagon Inquiry is Said to Confirm Muslims' Accounts of Sexual Tactics at Guantánamo, WASH, POST, at A1 (Feb. 10, 2005) (attached as Exh. C to the Powell Decl.).

17. Detainees in Guantánamo have also been continually subjected to a range of physically and psychologically abusive interrogation tactics, including denial of food or water, isolation, extreme temperatures (hot and cold), bright lights, loud music, and use of dogs. *See, e.g.*, Exhs. D and E to the Powell Decl.). In addition, interrogators have posed as civilian employees, *see, e.g.*, Exhs. F and G to the Powell Decl.; and have worked with Guantánamo medical personnel to coerce information from detainees under the false guise of providing needed medical care. *See, e.g.*, Exh. H to the Powell Decl.

18. Furthermore, detainees, without access to outside counsel, have been coerced into dropping allegations of abuse in order to secure release, according to government records. *See* Exh. I to the Powell Decl.

19. Many of the same abuses and allegations of torture that were exposed in recent months with respect to the United States-controlled Abu Ghraib prison in Iraq initially arose in Guantánamo. *See* Exh. J to the Powell Decl. Army and Pentagon investigations into the torture of prisoners in Iraq have revealed that United States military officials successfully sought to – as noted in an email – “Gitmotize” Abu Ghraib, *see, e.g.*, Exh. K to the Powell Decl., by implementing the Guantánamo interrogation and detention operations as a baseline. *See* Exh. L to the Powell Decl.

20. The patterns of torture and abuse promulgated against individuals detained at Guantánamo only further necessitate an expeditious response to Detained Petitioners’ motion.

21. For all of these reasons, Respondents should not be allowed to delay their response to this motion.

WHEREFORE, for the above-stated reasons and for any other reason that may become known to the Court, Detained Petitioners respectfully request that the writ or an order to show cause be issued forthwith with respect to each of these Detained Petitioners, returnable by Respondents in three (3) days.

Dated: New York, New York
November 4, 2005

Respectfully submitted,

Counsel for Petitioners/Plaintiffs:



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CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
Tel: (212) 614-6439
Fax: (212) 614-6499

CERTIFICATE OF SERVICE

Michelle Kass hereby certifies that:

I am a Paralegal at the law firm of Hunton & Williams LLP, attorneys for
Petitioners/Plaintiffs.

That on November 7, 2005, I served true copies of the attached Motion and
Memorandum of Points and Authorities in Support of Petitioners' Motion for the Immediate
Issuance of Writs of Habeas Corpus Pursuant to 28 U.S.C. § 2243 or, Alternatively, to Issue an
Order to Show Cause, along with the Declaration of Attorney Wesley R. Powell and attached
Exhibits A-L, at the addresses listed below via Certified Mail, Return Receipt Requested, by
depositing the same in a duly enclosed and sealed wrapper with the correct postage thereon, in an
official letter box duly maintained by the Government of the United States of American within
the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 7, 2005.



Michelle Kass

TO: George W. Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Donald Rumsfeld
Secretary of Defense
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Brigadier General Jay Hood
United States Army
Commander, Joint Task Force
JTF-GTMO
APO AE 09360

Colonel Mike Buamgarner
United States Army
Commander, Joint Detention Operations Group
JTF-GTMO
APO AE 09360

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

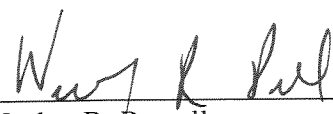
DECLARATION OF ATTORNEY WESLEY R. POWELL

I, Wesley R. Powell, declare under penalty of perjury that the following is true to the best of my knowledge, recollection and belief:

1. My name is Wesley R. Powell. I submit this Declaration in support of Petitioners' Motion For A Writ of Habeas Corpus or An Order To Show Cause Pursuant To 28 U.S.C. § 2243 in the above-captioned matter. I base this Declaration on personal knowledge.
2. I am an attorney and currently practice with the law firm of Hunton & Williams LLP, counsel of record for Petitioners Issam Hamid Ali Bin Ali Al Jayfi, Othman Ali Mohammed Al Shamrany, Khalid Mohammed Al Thabbi, Ali Hamza Ahmed Suliman Bahlool, Saleh Mohammed Seleh Al Thabbii and Abdu Al Qader Ahmed Hussain, in the above-captioned action.
3. Attached hereto as Exhibit A is what I believe to be a true and correct copy of a Memorandum for the Secretary of the Navy concerning an Order Establishing Combatant Status Review Tribunal, dated July 7, 2004.
4. Attached hereto as Exhibits B through L are what I believe to be true and correct copies of documents released pursuant to a court order, entered in litigation brought under the Freedom of Information Act. *See American Civil Liberties Union, et al. v. Department of Defense, et al.*, Docket No. 04-CV4151 (AKH) (S.D.N.Y.)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4 November 2005


Wesley R. Powell

CERTIFICATE OF SERVICE

Michelle Kass hereby certifies that:

I am a Paralegal at the law firm of Hunton & Williams LLP, attorneys for
Petitioners/Plaintiffs.

That on November 7, 2005, I served true copies of the attached Motion and
Memorandum of Points and Authorities in Support of Petitioners' Motion for the Immediate
Issuance of Writs of Habeas Corpus Pursuant to 28 U.S.C. § 2243 or, Alternatively, to Issue an
Order to Show Cause, along with the Declaration of Attorney Wesley R. Powell and attached
Exhibits A-L, at the addresses listed below via Certified Mail, Return Receipt Requested, by
depositing the same in a duly enclosed and sealed wrapper with the correct postage thereon, in an
official letter box duly maintained by the Government of the United States of American within
the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 7, 2005.



Michelle Kass

TO: George W. Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Donald Rumsfeld
Secretary of Defense
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Brigadier General Jay Hood
United States Army
Commander, Joint Task Force
JTF-GTMO
APO AE 09360

Colonel Mike Buamgarner
United States Army
Commander, Joint Detention Operations Group
JTF-GTMO
APO AE 09360

EXHIBIT A



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

- 7 JUL 2004

MEMORANDUM FOR THE SECRETARY OF THE NAVY

SUBJECT: Order Establishing Combatant Status Review Tribunal

This Order applies only to foreign nationals held as enemy combatants in the control of the Department of Defense at the Guantanamo Bay Naval Base, Cuba ("detainees").

a. Enemy Combatant. For purposes of this Order, the term "enemy combatant" shall mean an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces. Each detainee subject to this Order has been determined to be an enemy combatant through multiple levels of review by officers of the Department of Defense.

b. Notice. Within ten days after the date of this Order, all detainees shall be notified of the opportunity to contest designation as an enemy combatant in the proceeding described herein, of the opportunity to consult with and be assisted by a personal representative as described in paragraph (c), and of the right to seek a writ of habeas corpus in the courts of the United States.

c. Personal Representative. Each detainee shall be assigned a military officer, with the appropriate security clearance, as a personal representative for the purpose of assisting the detainee in connection with the review process described herein. The personal representative shall be afforded the opportunity to review any reasonably available information in the possession of the Department of Defense that may be relevant to a determination of the detainee's designation as an enemy combatant, including any records, determinations, or reports generated in connection with earlier determinations or reviews, and to consult with the detainee concerning that designation and any challenge thereto. The personal representative may share any information with the detainee, except for classified information, and may participate in the Tribunal proceedings as provided in paragraph (g)(4).

d. Tribunals. Within 30 days after the detainee's personal representative has been afforded the opportunity to review the reasonably available information in the possession of the Department of Defense and had an opportunity to consult with the detainee, a Tribunal shall be convened to review the detainee's status as an enemy combatant.

e. Composition of Tribunal. A Tribunal shall be composed of three neutral commissioned officers of the U.S. Armed Forces, each of whom possesses the appropriate security clearance and none of whom was involved in the apprehension,



detection, interrogation, or previous determination of status of the detainee. One of the members shall be a judge advocate. The senior member (in the grade of O-5 and above) shall serve as President of the Tribunal. Another non-voting officer, preferably a judge advocate, shall serve as the Recorder and shall not be a member of the Tribunal.

f. Convening Authority. The Convening Authority shall be designated by the Secretary of the Navy. The Convening Authority shall appoint each Tribunal and its members, and a personal representative for each detainee. The Secretary of the Navy, with the concurrence of the General Counsel of the Department of Defense, may issue instructions to implement this Order.

g. Procedures.

(1) The Recorder shall provide the detainee in advance of the proceedings with notice of the unclassified factual basis for the detainee's designation as an enemy combatant.

(2) Members of the Tribunal and the Recorder shall be sworn. The Recorder shall be sworn first by the President of the Tribunal. The Recorder will then administer an oath, to faithfully and impartially perform their duties, to all members of the Tribunal to include the President.

(3) The record in each case shall consist of all the documentary evidence presented to the Tribunal, the Recorder's summary of all witness testimony, a written report of the Tribunal's decision, and a recording of the proceedings (except proceedings involving deliberation and voting by the members), which shall be preserved.

(4) The detainee shall be allowed to attend all proceedings, except for proceedings involving deliberation and voting by the members or testimony and other matters that would compromise national security if held in the presence of the detainee. The detainee's personal representative shall be allowed to attend all proceedings, except for proceedings involving deliberation and voting by the members of the Tribunal.

(5) The detainee shall be provided with an interpreter, if necessary.

(6) The detainee shall be advised at the beginning of the hearing of the nature of the proceedings and of the procedures accorded him in connection with the hearing.

(7) The Tribunal, through its Recorder, shall have access to and consider any reasonably available information generated in connection with the initial determination to hold the detainee as an enemy combatant and in any subsequent reviews of that determination, as well as any reasonably available records, determinations, or reports generated in connection therewith.

(8) The detainee shall be allowed to call witnesses if reasonably available, and to question those witnesses called by the Tribunal. The Tribunal shall determine the

reasonable availability of witnesses. If such witnesses are from within the U.S. Armed Forces, they shall not be considered reasonably available if, as determined by their commanders, their presence at a hearing would affect combat or support operations. In the case of witnesses who are not reasonably available, written statements, preferably sworn, may be submitted and considered as evidence.

(9) The Tribunal is not bound by the rules of evidence such as would apply in a court of law. Instead, the Tribunal shall be free to consider any information it deems relevant and helpful to a resolution of the issue before it. At the discretion of the Tribunal, for example, it may consider hearsay evidence, taking into account the reliability of such evidence in the circumstances. The Tribunal does not have the authority to declassify or change the classification of any national security information it reviews.

(10) The detainee shall have a right to testify or otherwise address the Tribunal in oral or written form, and to introduce relevant documentary evidence.

(11) The detainee may not be compelled to testify before the Tribunal.

(12) Following the hearing of testimony and the review of documents and other evidence, the Tribunal shall determine in closed session by majority vote whether the detainee is properly detained as an enemy combatant. Preponderance of evidence shall be the standard used in reaching this determination, but there shall be a rebuttable presumption in favor of the Government's evidence.

(13) The President of the Tribunal shall, without regard to any other provision of this Order, have authority and the duty to ensure that all proceedings of or in relation to the Tribunal under this Order shall comply with Executive Order 12958 regarding national security information.

h. The Record. The Recorder shall, to the maximum extent practicable, prepare the record of the Tribunal within three working days of the announcement of the Tribunal's decision. The record shall include those items described in paragraph (g)(3) above. The record will then be forwarded to the Staff Judge Advocate for the Convening Authority, who shall review the record for legal sufficiency and make a recommendation to the Convening Authority. The Convening Authority shall review the Tribunal's decision and, in accordance with this Order and any implementing instructions issued by the Secretary of the Navy, may return the record to the Tribunal for further proceedings or approve the decision and take appropriate action.

i. Non-Enemy Combatant Determination. If the Tribunal determines that the detainee shall no longer be classified as an enemy combatant, the written report of its decision shall be forwarded directly to the Secretary of Defense or his designee. The Secretary or his designee shall so advise the Secretary of State, in order to permit the Secretary of State to coordinate the transfer of the detainee for release to the detainee's

country of citizenship or other disposition consistent with domestic and international obligations and the foreign policy of the United States.

j. This Order is intended solely to improve management within the Department of Defense concerning its detention of enemy combatants at Guantanamo Bay Naval Base, Cuba, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law, in equity, or otherwise by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

k. Nothing in this Order shall be construed to limit, impair, or otherwise affect the constitutional authority of the President as Commander in Chief or any authority granted by statute to the President or the Secretary of Defense.

This Order is effective immediately.

A handwritten signature in dark ink, appearing to read "Paul W. Wolfowitz", is written over a horizontal line. The signature is stylized with a large, looped 'P' and 'W'.

EXHIBIT B

AA22 302

Page 2

b6 -1
b7C -1

5/22/02

265A-WM-699102 translated by

[redacted] stated he had been beaten unconscious approximately three or four weeks ago when he was still at Camp X-Ray. A [redacted] number of guards entered his cell, unprovoked, and started spitting and cursing at him. The guards called him a "son of a bitch," and a "bastard," then told him he was crazy.

b6 -3,4
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b7D -1
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[redacted] rolled onto his stomach to protect himself. [redacted] stated a soldier named [redacted] jumped on his back and started beating him in the face. [redacted] then choked him until he passed out. [redacted] stated that [redacted] was beating him because [redacted] is a Muslim, and [redacted] is a Christian. [redacted] indicated there was a female guard named [redacted] who was also beating him and grabbed his head and beat it into the cell floor.

b6 -2,3,4
b7C -2,3,4
b7D -1
b7F -1

[redacted] stated that all the soldiers were aware of his [redacted] and he was taken to the hospital following the beating where he received an IV and treatment for his facial wounds. [redacted] claimed [redacted] who is a tall African American male, visited him at the hospital and told the doctors to immediately return him to the camp. [redacted] reported the aforementioned incident to two Red Cross representatives at Camp Delta, who he identified as [redacted] and [redacted]. [redacted] stated he did not do anything to cause the guards to enter his cell, and did everything they instructed him to do. [redacted] had what appeared to be a recent wound on the bridge of his nose.

b6 -2,3,4,5
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[redacted] stated that he was put in an isolation cell after he was involved in a dispute over food given to him. [redacted] stated that he is unable to eat certain foods, and was placed in isolation after arguing with a guard.

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b7F -1

[redacted]

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[redacted]

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DETAINEES-1722

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[REDACTED]

[REDACTED]

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DETAINEES-1723

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Page 4

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DETAINÉES-1724

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Page 5

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b7D -1
b7F -1

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DETAINEES-1725

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Page 6

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5/22/02

265A-MM-C99102

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b7F -1

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b7D -1
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claimed to be unaware of
the reasons behind his apprehension

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DETAINEES-1726

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Page 7

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5/22/02

after the Trade Center disaster.

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b7D -1
b7E -1

DETAINEES-1727

1727

5021

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

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Case No. 1:05-CV-02104 (RBW)

DECLARATION OF SERVICE

Michelle Kass hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746,
that:

I am a Paralegal at the law firm of Hunton & Williams LLP, attorneys for
Petitioners/Plaintiffs.

That on November 18, 2005, I caused to be served true copies of the following
documents:

1. Petition for Writ of Habeas Corpus and attached Exhibits A-F; and
2. Motion and Memorandum of Points and Authorities in Support of Petitioners' Motion for the Immediate Issuance of Writs of Habeas Corpus Pursuant to 28 U.S.C. § 2243 or, Alternatively, to Issue an Order to Show Cause, along with the Declaration of Attorney Wesley R. Powell and attached Exhibits A-L.

at the addresses listed below via Certified Mail, Return Receipt Requested, by depositing the same in a duly enclosed and sealed wrapper with the correct postage thereon, in an official letter box duly maintained by the Government of the United States of American within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 18, 2005.

Michelle Kass

Michelle Kass

TO: George W. Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Donald Rumsfeld
Secretary of Defense
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Brigadier General Jay Hood
United States Army
Commander, Joint Task Force
JTF-GTMO
APO AE 09360

Colonel Mike Buamgarner
United States Army
Commander, Joint Detention Operations Group
JTF-GTMO
APO AE 09360

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL
JAYFI, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2104 (RBW)

**RESPONDENTS' MOTION TO STAY PROCEEDINGS PENDING RELATED
APPEALS AND OPPOSITION TO PETITIONERS' MOTION FOR THE
IMMEDIATE ISSUANCE OF WRITS OF HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2243 OR, ALTERNATIVELY, TO ISSUE AN ORDER TO SHOW CAUSE**

For the reasons explained below, respondents move to stay proceedings in the above-captioned case pending resolution of all appeals in Khalid v. Bush, Boumediene v. Bush, Nos. 04-CV-1142 (RJL), 04-CV-1166 (RJL), 355 F. Supp. 2d 311 (D.D.C. 2005), appeals docketed, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005), appeal on petition for interlocutory appeal, No. 05-5064 (D.C. Cir. Mar. 10, 2005). Respondents also hereby oppose petitioners' motion for the immediate issuance of a writ of habeas corpus or order to show cause. The pending appeals will address the core issues in this case and, thus, determine how this case should proceed, including whether factual returns submitted in response to an order to show cause should be required, if at all. It makes no sense for this case to proceed prior to resolution of the appeals; further proceedings would require the expenditure of significant judicial and other resources that

may be avoided as a result of the appeals, and, in any event, such proceedings very likely would have to be revisited or relitigated once the appeals are decided and the Court of Appeals provides guidance regarding handling of the claims in all of the Guantanamo detainee cases.

In seeking a stay, however, respondents do not intend thereby to block counsel access to properly represented petitioners. To that end, respondents do not object to entry of the protective order previously entered in other Guantanamo detainee cases, along with appropriate supplementary orders, to permit such access.¹ See Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 8, 2004) (attached as Exhibit A); Order Supplementing and Amending Filing Procedures Contained in November 8, 2004 Amended Protective Order in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Dec. 13, 2004) (attached as Exhibit B); Order Addressing Designation Procedures for “Protected Information” in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 10, 2004) (attached as Exhibit C).²

Pursuant to LCvR 7(m), counsel for respondents conferred with counsel for petitioners, who indicated that they oppose the relief as requested herein.

¹ Respondents’ lack of objection to entry of these orders, however, is without prejudice to their right to challenge any particular terms of these orders in any future proceedings as appropriate.

² Respondents have been unable to identify petitioners Abdul Al Qader Ahmed Hussain, Khalid Mohammed Al Thabbi, Othman Ali Mohammed Al Shamrany, and Saleh Mohammed Seleh Al Thabbii as detainees at Guantanamo Bay. Petitioner Ali Hamza Ahmed Suliman Bahloul has been charged and is subject to trial by Military Commission.

BACKGROUND

The above-captioned case is one of more than 175 habeas petitions filed on behalf of aliens detained by the Department of Defense (“DoD”) at the United States Naval Base at Guantanamo Bay, Cuba. Within just a few weeks after the Supreme Court’s decision in Rasul v. Bush, 542 U.S. 466 (2004), which held that aliens apprehended abroad and detained at Guantanamo as enemy combatants can invoke the habeas jurisdiction of a district court under 28 U.S.C. § 2241, there were pending in this Court thirteen habeas lawsuits on behalf of more than 60 Guantanamo detainees. Given the common issues involved in the Guantanamo detainee cases, the situation led this Court to issue, on or about September 14, 2004, a Resolution of the Executive Session, providing that the Guantanamo detainee cases and any similar cases filed in the future were to be transferred to Senior Judge Joyce Hens Green for coordination and management, with the transferring judges retaining the cases for all other purposes. Under the Resolution, Judge Green was to decide any common procedural and substantive issues with the consent of the transferring judge(s).

Pursuant to her charge, Judge Green established a schedule for the filing by respondents of returns indicating the factual bases for the detention of each petitioner and also scheduled briefing on the legal issues pertaining to the petitions, i.e., on respondents’ motion to dismiss or for judgment as a matter of law. Judge Green also entered a protective order applicable to the cases, which included procedures for counsel access to detainees, taking into account the potentially classified nature of much of the information held by or pertaining to the detainees. See Amended Protective Order and Procedures for Counsel Access to Detainees at the United

States Naval Base in Guantanamo Bay, Cuba in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 8, 2004).

On January 19, 2005, Judge Leon granted respondents' motion to dismiss or for judgment in its entirety, concluding that constitutional protections do not extend to aliens outside sovereign United States territory, such as petitioners, and that petitioners also have no viable claims under U.S. statutory law or international law or treaties. See Khalid v. Bush, No. 04-CV-1142 (RJL), Boumediene v. Bush, No. 04-CV-1166 (RJL), 355 F. Supp. 2d 311 (D.D.C. 2005). The Khalid and Boumediene cases are currently on appeal to the D.C. Circuit. See Nos. 05-5062, 05-5063 (D.C. Cir.).

On January 31, 2005, Judge Green entered an order (and memorandum opinion) in eleven other of the pending Guantanamo Bay detainee cases³ denying in part and granting in part respondents' motion to dismiss or for judgment as a matter of law. See Memorandum Opinion Denying in Part and Granting in Part Respondents' Motion to Dismiss or for Judgment as a Matter of Law in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005). Contrary to the prior decision of Judge Leon, Judge Green, inter alia, determined that procedural "due process" protections apply to aliens detained at Guantanamo Bay and that the Combatant Status Review Tribunal proceedings the military has used to confirm detainees' status as enemy combatants do not satisfy these due process requirements. Id. at 453-78.

³ Hicks v. Bush, No. 02-CV-0299 (CKK); Al Odah v. United States, No. 02-CV-0828 (CKK); Habib v. Bush, No. 02-CV-1130 (CKK); Kurnaz v. Bush, No. 04-CV-1135 (ESH); O.K.v. Bush, No. 04-CV-1136 (JDB); Begg v. Bush, No. 04-CV-1137 (RMC); El-Banna v. Bush, No. 04-CV-1144 (RWR); Gherebi v. Bush, No. 04-CV-1164 (RBW); Anam v. Bush, No. 04-CV-1194 (HHK); Almurbati v. Bush, No. 04-CV-1227 (RBW); and Abdah v. Bush, No. 04-CV-1254 (HHK).

Further, in her decision, Judge Green agreed with the decision of Judge Robertson in Hamdan v. Rumsfeld, 344 F. Supp. 2d 152, 165 (D.D.C. 2004), rev'd, 415 F.3d 33 (D.C. Cir. 2005), and concluded that the Third Geneva Convention is “self-executing” and can provide petitioners with a claim in a habeas action.⁴ 355 F. Supp. 2d at 478-80. Judge Green, however, dismissed petitioners’ remaining constitutional, statutory, international law, and treaty claims. Id. at 480-81.

Judge Green noted that her January 31, 2005 decision on respondents’ motion to dismiss or for judgment “technically applie[d] only to the eleven cases contained in the [opinion’s] caption,” but the Court nevertheless acknowledged that the opinion “addresse[d] issues common” to eight other Guantanamo Bay detainee cases that had been filed during or after the briefing and oral argument that resulted in the Court’s opinion.⁵ See id. at 452 & n.15.

On February 3, 2005, respondents filed a motion seeking certification of the January 31, 2005 order for interlocutory appeal and filed a motion to stay all the Guantanamo Bay detainee cases pending at that time, consistent with the need for these cases to proceed in a coordinated fashion. Thus, the motion was filed as a motion for certification of order for interlocutory appeal and for a stay in the eleven cases in which the January 31, 2005 order was entered, and was filed by respondents solely as a motion to stay in the other then-pending cases. Judge Green certified her January 31, 2005 decision on respondents’ motion to dismiss or for judgment for appeal and

⁴ The D.C. Circuit held in Hamdan that the Third Geneva Convention does not give rise to claims enforceable in court. See Hamdan, 415 F.3d at 40.

⁵ Belmar v. Bush, No. 04-CV-1897 (RMC); Al-Qosi v. Bush, No. 04-CV-1937 (PLF); Paracha v. Bush, No. 04-CV-2022 (PLF); Al-Marri v. Bush, No. 04-CV-2035 (GK); Zemiri v. Bush, No. 04-CV-2046 (CKK); Deghayes v. Bush, No. 04-CV-2215 (RMC); Mustapha v. Bush, No. 05-CV-22 (JR); Abdullah v. Bush, No. 05-CV-23 (RWR).

stayed proceedings in the eleven cases in which the January 31, 2005 order was entered, “for all purposes pending resolution of all appeals.” Judge Green left the decision whether to stay cases other than the eleven to the individual judges in those cases. See Order Granting in Part and Denying in Part Respondents’ Motion for Certification of Jan. 31, 2005 Orders and for Stay in In re Guantanamo Detainee Cases (Feb. 3, 2005) (Green, J.).

Various petitioners in the eleven cases sought reconsideration of Judge Green’s stay order, arguing that the Court should permit factual development and proceedings regarding detainee living conditions to go forward. See, e.g., Petrs’ Motion for Reconsideration of Order Granting Stay Pending Appeal at 9-10 (dkt. no. 203 in Al Odah, No. 02-CV-0828 (CKK)). Judge Green, however, denied the motion for reconsideration

in light of the substantial resources that would be expended and the significant burdens that would be incurred should this litigation go forward, and . . . [in] recognition that a reversal of the Court’s January 31, 2005 rulings would avoid the expenditure of such resources and incurrence of such burdens

See Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 482 (D.D.C. 2005) (Green, J.).

On February 9, 2005, pursuant to Judge Green’s certification, respondents filed a petition for interlocutory appeal of the January 31, 2005 decision with the D.C. Circuit, see 28 U.S.C. § 1292(b), and requested that the appeal proceed on an expedited basis. Further, petitioners in the eleven cases subject to Judge Green’s decision filed a cross-petition for interlocutory appeal with the D.C. Circuit and petitioners in Al-Odah appealed Judge Green’s stay order. On March 10, 2005, the D.C. Circuit accepted the interlocutory appeal. In addition, as noted above,

petitioners in Khalid and Boumediene appealed Judge Leon's decision. Oral argument in both appeals was held on September 8, 2005.

In light of these pending appeals, several of the cases pending at the time of Judge Green's decision, but that Judge Green did not stay, have been stayed pending appeal. See Paracha, No. 04-CV-2022 (PLF) (dkt. no. 49); Al Marri, No. 04-CV-2035 (GK) (dkt. no. 26); Zemiri, No. 04-CV-2046 (CKK) (dkt. no. 32); Deghayes, No. 04-CV-2215 (RMC) (dkt. no. 7); Mustapha, No. 05-CV-22 (JR) (dkt. no. 7); Abdullah, No. 05-CV-23 (RWR) (dkt. no. 16). As Judge Kessler stated in her stay order in Al Marri,

The opinions resolving Judge Leon's and Judge Green's cases encompass and discuss many of the precise issues raised in Respondents' Motion [to Stay]. Thus, until the Court of Appeals addresses these issues, the law in this Circuit is unsettled, since Judge Green and Judge Leon reached different conclusions about many of the issues before them. Requiring this case to proceed before appellate resolution of those cases therefore would involve an unnecessary expenditure of judicial resources.

Order dated March 8, 2005 in Al-Marri, No. 04-CV-2035 (GK), at 2.

Since February 3, 2005 – the date respondents moved to stay all of the Guantanamo Bay detainee cases pending at that time – over 150 new petitions, involving approximately 230 petitioners, have been filed. Respondents have filed motions to stay proceedings in these new cases for the reasons stated herein, and several Judges of this Court have stayed proceedings in the cases pending before them.⁶ The above-captioned case is part of this wave of new petitions.

⁶ See Al Mohammed v. Bush, No. 05-CV-0247 (HHK) (dkt. no. 18); El-Mashad v. Bush, No. 05-CV-0270 (JR) (dkt. no. 29); Al-Adahi v. Bush, No. 05-CV-0280 (GK) (dkt. no. 35); Al Joudi v. Bush, No. 05-CV-0301 (GK) (dkt. no. 26); Al-Wazan v. Bush, No. 05-CV-0329 (PLF) (dkt. no. 15); Al-Anazi v. Bush, No. 05-CV-0345 (JDB) (dkt. no. 21); Alhami v. Bush, No. 05-CV-0359 (GK) (dkt. no. 20); Ameziane v. Bush, No. 05-CV-0392 (ESH) (dkt. no. 12); Sliti v. Bush, No. 05-CV-0429 (R JL) (dkt. no. 8); M.C. v. Bush, No. 05-CV-0430 (ESH) (dkt. no. 10);

Kabir v. Bush, No. 05-CV-0431 (RJL) (dkt. no. 10); Qayed v. Bush, No. 05-CV-0454 (RMU) (dkt. no. 4); Al-Shihry v. Bush, No. 05-CV-0490 (PLF) (dkt. no. 14); Aziz v. Bush, No. 05-CV-492 (JR) (dkt. no. 16); Qassim v. Bush, No. 05-CV-0497 (JR) (dkt. no. 14); Al-Oshan v. Bush, No. 05-CV-0520 (RMU) (dkt. no. 12); Tumani v. Bush, No. 05-CV-0526 (RMU) (dkt. no. 5); Al-Oshan v. Bush, No. 05-CV-0533 (RJL) (dkt. no. 6); Al Shamri v. Bush, No. 05-CV-0551 (RWR) (dkt. no. 10); Salahi v. Bush, No. 05-CV-0569 (JR) (dkt. no. 8); Mammar v. Bush, No. 05-CV-0573 (RJL) (dkt. no. 5); Al-Sharekh v. Bush, No. 05-CV-0583 (RJL) (dkt. no. 9); Magram v. Bush, No. 05-CV-0584 (CKK) (dkt. no. 9); Al Rashaidan v. Bush, No. 05-CV-0586 (RWR) (dkt. no. 10); Mokit v. Bush, No. 05-CV-0621 (PLF) (dkt. no. 13); Al Daini v. Bush, No. 05-CV-0634 (RWR) (dkt. no. 10); Ahmed v. Bush, No. 05-CV-0665 (RWR) (dkt. no. 16); Battayav v. Bush, No. 05-CV-0714 (RBW) (dkt. no. 12); Adem v. Bush, No. 05-CV-0723 (RWR) (dkt. no. 13); Hamlily v. Bush, No. 05-CV-0763 (JDB) (dkt. no. 10); Imran v. Bush, No. 05-CV-0764 (CKK) (dkt. no. 6); Al Habashi v. Bush, No. 05-CV-0765 (EGS) (Minute Order dated September 23, 2005); Al Hamamy v. Bush, No. 05-CV-0766 (RJL) (dkt. no. 6); Hamoodah v. Bush, No. 05-CV-0795 (RJL) (dkt. no. 13); Rahmattullah v. Bush, No. 05-CV-0878 (CKK) (dkt. no. 3); Mohammed v. Bush, No. 05-CV-0879 (RBW) (dkt. no. 4); Nasrat v. Bush, No. 05-CV-0880 (ESH) (dkt. no. 4); Slahi v. Bush, No. 05-CV-0881 (RWR) (dkt. no. 5); Bostan v. Bush, No. 05-CV-0883 (RBW) (dkt. no. 4); Chaman v. Bush, No. 05-CV-0887 (RWR) (dkt. no. 7); Gul v. Bush, No. 05-CV-0888 (CKK) (dkt. no. 3); Basardh v. Bush, No. 05-CV-0889 (ESH) (dkt. no. 4); Nasrullah v. Bush, No. 05-CV-0891 (RBW) (dkt. no. 4); Shaaban v. Bush, No. 05-CV-0892 (CKK) (dkt. no. 3); Sohail v. Bush, No. 05-CV-0993 (RMU) (dkt. no. 3); Tohirjanovich v. Bush, No. 05-CV-0994 (JDB) (dkt. no. 4); Al Karim v. Bush, No. 05-CV-0998 (RMU) (dkt. no. 3); Al-Khalaqi v. Bush, No. 05-CV-0999 (RBW) (dkt. no. 3); Kahn v. Bush, No. 05-CV-1001 (ESH) (dkt. no. 3); Mangut v. Bush, No. 05-CV-1008 (JDB) (dkt. no. 2); Hamad v. Bush, No. 05-CV-1009 (JDB) (dkt. no. 4); Khan v. Bush, No. 05-CV-1010 (RJL) (dkt. no. 3); Ali Shah v. Bush, No. 05-CV-1012 (ESH) (dkt. no. 3); Salaam v. Bush, No. 05-CV-1013 (JDB) (dkt. no. 2); Al-Hela v. Bush, No. 05-CV-1048 (RMU) (dkt. no. 12); Khalifh v. Bush, No. 05-CV-1189 (JR) (dkt. no. 9); Zalita v. Bush, No. 05-CV-1220 (RMU) (dkt. no. 3); Abdulzاهر v. Bush, No. 05-CV-1236 (RWR) (dkt. no. 12); Aminullah v. Bush, No. 05-CV-1237 (ESH) (dkt. no. 3); Ghalib v. Bush, No. 05-CV-1238 (CKK) (dkt. no. 3); Al Khaiy v. Bush, No. 05-CV-1239 (RJL) (dkt. no. 5); Pirzai v. Bush, No. 05-CV-1242 (RCL) (dkt. no. 4); Peerzai v. Bush, No. 05-CV-1243 (RCL) (dkt. no. 4); Alsawam v. Bush, No. 05-CV-1244 (CKK) (dkt. no. 3); Mohammadi v. Bush, No. 05-CV-1246 (RWR) (dkt. no. 7); Al Ginco v. Bush, No. 05-CV-1310 (RJL) (dkt. no. 5); Ullah v. Bush, No. 05-CV-1311 (RCL) (dkt. no. 5); Al Bihani v. Bush, No. 05-CV-1312 (RJL) (dkt. no. 4); Mohammed v. Bush, No. 05-CV-1347 (GK) (dkt. no. 7); Saib v. Bush, No. 05-CV-1353 (RMC) (Minute Order dated August 1, 2005); Hatim v. Bush, No. 05-CV-1429 (RMU) (dkt. no. 16); Al-Subaiy v. Bush, No. 05-CV-1453 (RMU) (dkt. no. 14); Dhiab v. Bush, No. 05-CV-1457 (GK) (Minute Order dated August 29, 2005); Sadkhan v. Bush, No. 05-CV-1487 (RMC) (dkt. no. 13); Faizullah v. Bush, No. 05-CV-1489 (RMU) (dkt. no. 3); Faraj v. Bush, No. 05-CV-1490 (PLF) (dkt. no. 11); Ahmad v. Bush, No. 05-CV-1492 (RCL) (dkt. no. 3); Amon v. Bush, No. 05-CV-1493 (RBW) (dkt. no. 3); Kiyemba v. Bush, No. 05-CV-1509 (RMU) (dkt. no. 8); Attash v. Bush, No. 05-CV-1592 (RCL) (dkt. no. 12); Mamet v. Bush, No.

For the reasons explained below, the proceedings in this case should be stayed, and factual returns should not be required, pending resolution of all appeals.

ARGUMENT

I. The Court Should Grant a Stay of the Above-Captioned Guantanamo Bay Detainee Case Pending Resolution of the Pending Related Appeals.

In light of the extraordinary issues presented in the above-captioned case that must be resolved on appeal, respondents seek a stay of this case, which presents issues, indeed core claims, that are directly raised in, or will be affected by decisions in, the appeals in In re Guantanamo Detainee Cases, Khalid, and Boumediene. The outcome of the appeals will determine how all of the Guantanamo detainee cases should proceed, if at all. In light of this fact, this case should not go forward prior to obtaining such guidance from the D.C. Circuit through the resolution of the appeals.⁷

05-CV-1602 (ESH) (dkt. no. 9); Akhtiar v. Bush, No. 05-CV-1635 (PLF) (dkt. no. 10); Ghanem v. Bush, No. 05-CV-1638 (CKK) (dkt. no. 7); Al-Badah v. Bush, No. 05-CV-1641 (CKK) (dkt. no. 12); Zaid v. Bush, No. 05-CV-1646 (JDB) (dkt. no. 12); Bin Amir v. Bush, No. 05-CV-1724 (RMU) (dkt. no. 11); Sameur v. Bush, No. 05-CV-1806 (CKK) (dkt. no. 5); Al-Harbi v. Bush, No. 05-CV-1857 (CKK) (dkt. no. 3).

⁷ The Court has the authority to stay proceedings in habeas cases, even prior to the filing of a response. Pursuant to the Rules Governing Section 2254 Cases in the United States District Courts (the “2254 Rules”), which are applicable to petitions for writ of habeas corpus other than those arising under 28 U.S.C. § 2254, such as the petitions in these cases, see 2254 Rule 1(b), a court may extend the deadline for responses to habeas petitions beyond the time limits set forth in 28 U.S.C. § 2243 — the 2254 Rules do not indicate a fixed deadline for responding to habeas petitions, and they supersede the time limits set forth in 28 U.S.C. § 2243. Rule 4 provides that “the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. . . .” See also Bleitner v. Welborn, 15 F.3d 652, 653-54 (7th Cir. 1994) (“[T]he Rules Governing Section 2254 Cases in the United States District Courts, which have the force of a superseding statute, 28 U.S.C. § 2072(b) . . . loosened up the deadline for responses. Rule 4 leaves it up to the district court to fix the deadline.”); Castillo v. Pratt, 162 F. Supp. 2d 575, 577 (N.D. Tex. 2001) (denying § 2241 petitioner’s request for expedited consideration because “[t]he discretion afforded by Rule 4 of the 2254 Rules

The petition in this case, which seeks to challenge the legality of the detention of a foreign national detained at Guantanamo Bay as an enemy combatant, raises legal issues that were squarely addressed by the opinions in In re Guantanamo Detainee Cases, Khalid, and Boumediene and that are raised in the appeals, including: (1) whether the petitioners have stated valid claims under the Fifth Amendment to the United States Constitution and, if so, whether the procedures implemented by respondents to determine the status of petitioners violate their Fifth Amendment rights; (2) whether the petitioners have stated valid claims under the Third Geneva Convention;⁸ and (3) whether the petitioners have stated valid claims based on various other legal theories, including other Constitutional provisions, other international treaties, Military regulations, the Administrative Procedures Act, the Alien Tort Statute, and customary international law. It makes no sense for proceedings related to the merits of this case, such as the submission of a factual return in response to an order to show cause regarding the issuance of a writ of habeas corpus, to go forward when decisions from the D.C. Circuit on the related

“prevails” over the strict time limits of 28 U.S.C. § 2243”); Kramer v. Jenkins, 108 F.R.D. 429, 431 (N.D. Ill. 1985) (denying § 2241 petitioner’s motion for correction of court scheduling order because “in the conflict between Rule 4 of the 2254 Rules and 28 U.S.C. § 2243, Rule 4 must prevail”). Furthermore, the 2254 Rules have provided courts with the discretion to consider the burdens involved in filing responses to habeas petitions when implementing case management schedules. See Advisory Committee Notes to 2254 Rules; see also Lonchar v. Thomas, 517 U.S. 314, 325 (1996) (stating that the 2254 Rules confer “ample discretionary authority” on district courts “to tailor the proceedings” in habeas cases). See also Landis v. North American Co., 299 U.S. 248, 254-55 (1936) (“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”); id. at 256 (noting propriety of stay in cases “of extraordinary public moment”).

⁸ See footnote 4, supra.

Guantanamo detainee appeals will determine the legal analyses applicable to this case and, indeed, whether and how this case should proceed.

Also, as Judge Green recognized, further proceedings consistent with her January 31, 2005 rulings, including, in the view of petitioners in those cases, extensive discovery and factual development, promise to impose “significant burdens” that may be avoided, depending on the outcome of the appeals. See Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases, 355 F. Supp. 2d 482. And as Judge Kessler concluded, “the law in this Circuit is [currently] unsettled,” given the contrary decisions of Judges Green and Leon. Al Marri, No. 04-CV-2035 (GK) (dkt. no. 26). Requiring this case to proceed before resolution of the appeals “would involve an unnecessary expenditure of judicial resources.” Id. Indeed, any proceedings that are permitted to go forward very likely would have to be revisited or relitigated once the appeals are decided and the Court of Appeals provides guidance regarding handling of the claims in the Guantanamo detainee cases.

For these reasons, this case should be stayed pending guidance from the D.C. Circuit, through the various appeals, regarding the issues in this case, including whether and how to proceed.

II. Respondents Should Not Be Required to Submit Factual Returns During the Pendency of the Stay.

Although respondents do not object to entry of the protective order and related, supplementary orders previously entered in other Guantanamo detainee cases to enable counsel to meet and correspond with properly represented petitioners in a privileged manner at Guantanamo Bay on appropriate matters related to this case, it makes no sense for the

government to process and submit factual returns⁹ with respect to petitioners when the D.C. Circuit will be considering the proper scope of these habeas proceedings, including whether the claims can be dismissed without reference to specific factual returns. See Khalid, 355 F. Supp. 2d 311 (dismissing petitioners' claims in their entirety). Even if counsel had access to factual returns, they would not be able to share classified information in the returns with petitioners. See Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 8, 2004), ¶ 30. Thus, there is no reason why counsel need access to factual returns at this time.¹⁰

Moreover, the submission of factual returns which, in any event, may ultimately be unnecessary, burdens the government's resources and risks the inadvertent disclosure of classified information. Each factual return must be obtained from the Department of Defense, and then reviewed by agencies who provided source information to DoD to ensure that information disclosed to counsel in the returns is in accordance with all applicable statutes, regulations and Executive Orders. Respondents must then prepare both public and classified versions of the factual returns for submission to the Court and counsel. Each return can range

⁹ A factual return for a petitioner in a Guantanamo detainee case typically has consisted of the record of proceedings before the Combatant Status Review Tribunal that confirmed petitioner's status as an enemy combatant properly subject to detention. The factual return is separate from briefing on legal issues in the cases. Factual returns include both classified and unclassified material.

¹⁰ In this vein, various Judges of this Court have declined to require factual returns during the pendency of the stay. See, e.g., Sliti v. Bush, No. 05-CV-0429 (RJL) (dkt. no. 5); Imran v. Bush, No. 05-CV-0764 (CKK) (dkt. no. 6); Attash v. Bush, No. 05-CV-1592 (RCL) (dkt. no. 12).

from dozens to hundreds of pages, depending upon the circumstances. Thus, respondents face an immense logistical burden to process and file the returns, especially on the short, simultaneous schedules being requested by petitioners in the various cases. Further, submission of these returns vastly expands access to classified information contained in the returns, thereby increasing the risks of inadvertent or other disclosure or compromise of the information. These burdens and risks, however, could be rendered completely unnecessary, depending on the outcome of the appeals. Cf. Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases, 355 F. Supp. 2d 482 (staying cases so as to avoid expenditure of “substantial resources” and imposition of “significant burdens” that might not be necessary depending on outcome of appeal).

Although certain Judges of this Court have ordered respondents to submit factual returns in cases that are otherwise stayed, respondents oppose the submission of factual returns in the above-captioned case for the reasons stated herein. If submission of factual returns were to go forward at all, it could only be done pursuant to a coordinated and reasonable schedule, taking account of the fact that petitioners in all the recently filed cases are seeking factual returns and recognizing the logistical burdens posed by an undertaking to produce returns in the cases. Given these circumstances, a schedule for the rolling production of factual returns in these cases (and potentially other cases) over the next 10 to 12 weeks would be appropriate. In a number of other recent cases, the government has been given between 90 and 120 days to file factual returns, and respondents request that the Court impose a similar schedule, if the Court decides to require a factual return. See e.g., Battayav, No. 05-CV-0714 (RBW) (dkt. no. 12) (imposing 120-day schedule); Al-Joudi, No. 05-CV-0301 (GK) (dkt. no. 26) (imposing 90-day schedule);

Al-Wazan, No. 05-CV-0329 (PLF) (dkt. no. 37) (imposing 90-day schedule); Al-Anazi, No. 05-CV-0345 (JDB) (dkt. no. 21) (imposing 120-day schedule); Ameziane, No. 05-CV-392 (ESH) (dkt. no. 12) (imposing 90-day schedule); Qayed, No. 05-CV-0454 (RMU) (dkt. no. 5) (imposing 90-day schedule).

CONCLUSION

For these reasons, the Court should stay further proceedings in this case, except as noted above, pending resolution of the appeals of Judge Leon's decision in Khalid and Boumediene and Judge Green's January 31, 2005 decision in In re Guantanamo Detainee Cases. Petitioners' motion for immediate issuance of a writ of habeas corpus or order to show cause should be denied. A proposed order is attached.

Dated: November 18, 2005

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL
JAYFI, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2104 (RBW)

(PROPOSED) ORDER

Having considered Respondents' Motion to Stay Proceedings Pending Related Appeals, the opposition filed thereto, and any reply, as well as the entire record in this case, and it appearing that good cause exists for granting the motion, it is hereby

ORDERED that the Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, first issued on November 8, 2004 in In re Guantanamo Detainee Cases, 344 F. Supp. 2d 174 (D.D.C. 2004), the Order Supplementing and Amending Filing Procedures Contained in November 8, 2004 Amended Protective Order, first issued on December 13, 2004 in In re Guantanamo Detainee Cases, and the Order Addressing Designation Procedures for "Protected Information," first issued on November 10, 2004 in In re Guantanamo Detainee Cases shall apply in the above-captioned case. It is

FURTHER ORDERED that the above-captioned case is stayed pending resolution of all appeals in Khalid v. Bush, Boumediene v. Bush, Nos. 04-CV-1142 (RJL), 04-CV-1166 (RJL),

355 F. Supp. 2d 311 (D.D.C. 2005), appeals docketed, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005), appeal on petition for interlocutory appeal, No. 05-5064 (D.C. Cir. Mar. 10, 2005). It is

FURTHER ORDERED that petitioners' motion for immediate issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2243 or, alternatively, to issue an order to show cause is DENIED.

IT IS SO ORDERED.

DATED: _____

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL
JAYFI, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2104 (RBW)

**RESPONDENTS' MOTION TO STAY PROCEEDINGS PENDING RELATED
APPEALS AND OPPOSITION TO PETITIONERS' MOTION FOR THE
IMMEDIATE ISSUANCE OF WRITS OF HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2243 OR, ALTERNATIVELY, TO ISSUE AN ORDER TO SHOW CAUSE**

For the reasons explained below, respondents move to stay proceedings in the above-captioned case pending resolution of all appeals in Khalid v. Bush, Boumediene v. Bush, Nos. 04-CV-1142 (RJL), 04-CV-1166 (RJL), 355 F. Supp. 2d 311 (D.D.C. 2005), appeals docketed, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005), appeal on petition for interlocutory appeal, No. 05-5064 (D.C. Cir. Mar. 10, 2005). Respondents also hereby oppose petitioners' motion for the immediate issuance of a writ of habeas corpus or order to show cause. The pending appeals will address the core issues in this case and, thus, determine how this case should proceed, including whether factual returns submitted in response to an order to show cause should be required, if at all. It makes no sense for this case to proceed prior to resolution of the appeals; further proceedings would require the expenditure of significant judicial and other resources that

may be avoided as a result of the appeals, and, in any event, such proceedings very likely would have to be revisited or relitigated once the appeals are decided and the Court of Appeals provides guidance regarding handling of the claims in all of the Guantanamo detainee cases.

In seeking a stay, however, respondents do not intend thereby to block counsel access to properly represented petitioners. To that end, respondents do not object to entry of the protective order previously entered in other Guantanamo detainee cases, along with appropriate supplementary orders, to permit such access.¹ See Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 8, 2004) (attached as Exhibit A); Order Supplementing and Amending Filing Procedures Contained in November 8, 2004 Amended Protective Order in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Dec. 13, 2004) (attached as Exhibit B); Order Addressing Designation Procedures for “Protected Information” in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 10, 2004) (attached as Exhibit C).²

Pursuant to LCvR 7(m), counsel for respondents conferred with counsel for petitioners, who indicated that they oppose the relief as requested herein.

¹ Respondents’ lack of objection to entry of these orders, however, is without prejudice to their right to challenge any particular terms of these orders in any future proceedings as appropriate.

² Respondents have been unable to identify petitioners Abdul Al Qader Ahmed Hussain, Khalid Mohammed Al Thabbi, Othman Ali Mohammed Al Shamrany, and Saleh Mohammed Seleh Al Thabbii as detainees at Guantanamo Bay. Petitioner Ali Hamza Ahmed Suliman Bahloul has been charged and is subject to trial by Military Commission.

BACKGROUND

The above-captioned case is one of more than 175 habeas petitions filed on behalf of aliens detained by the Department of Defense (“DoD”) at the United States Naval Base at Guantanamo Bay, Cuba. Within just a few weeks after the Supreme Court’s decision in Rasul v. Bush, 542 U.S. 466 (2004), which held that aliens apprehended abroad and detained at Guantanamo as enemy combatants can invoke the habeas jurisdiction of a district court under 28 U.S.C. § 2241, there were pending in this Court thirteen habeas lawsuits on behalf of more than 60 Guantanamo detainees. Given the common issues involved in the Guantanamo detainee cases, the situation led this Court to issue, on or about September 14, 2004, a Resolution of the Executive Session, providing that the Guantanamo detainee cases and any similar cases filed in the future were to be transferred to Senior Judge Joyce Hens Green for coordination and management, with the transferring judges retaining the cases for all other purposes. Under the Resolution, Judge Green was to decide any common procedural and substantive issues with the consent of the transferring judge(s).

Pursuant to her charge, Judge Green established a schedule for the filing by respondents of returns indicating the factual bases for the detention of each petitioner and also scheduled briefing on the legal issues pertaining to the petitions, i.e., on respondents’ motion to dismiss or for judgment as a matter of law. Judge Green also entered a protective order applicable to the cases, which included procedures for counsel access to detainees, taking into account the potentially classified nature of much of the information held by or pertaining to the detainees. See Amended Protective Order and Procedures for Counsel Access to Detainees at the United

States Naval Base in Guantanamo Bay, Cuba in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 8, 2004).

On January 19, 2005, Judge Leon granted respondents' motion to dismiss or for judgment in its entirety, concluding that constitutional protections do not extend to aliens outside sovereign United States territory, such as petitioners, and that petitioners also have no viable claims under U.S. statutory law or international law or treaties. See Khalid v. Bush, No. 04-CV-1142 (RJL), Boumediene v. Bush, No. 04-CV-1166 (RJL), 355 F. Supp. 2d 311 (D.D.C. 2005). The Khalid and Boumediene cases are currently on appeal to the D.C. Circuit. See Nos. 05-5062, 05-5063 (D.C. Cir.).

On January 31, 2005, Judge Green entered an order (and memorandum opinion) in eleven other of the pending Guantanamo Bay detainee cases³ denying in part and granting in part respondents' motion to dismiss or for judgment as a matter of law. See Memorandum Opinion Denying in Part and Granting in Part Respondents' Motion to Dismiss or for Judgment as a Matter of Law in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005). Contrary to the prior decision of Judge Leon, Judge Green, inter alia, determined that procedural "due process" protections apply to aliens detained at Guantanamo Bay and that the Combatant Status Review Tribunal proceedings the military has used to confirm detainees' status as enemy combatants do not satisfy these due process requirements. Id. at 453-78.

³ Hicks v. Bush, No. 02-CV-0299 (CKK); Al Odah v. United States, No. 02-CV-0828 (CKK); Habib v. Bush, No. 02-CV-1130 (CKK); Kurnaz v. Bush, No. 04-CV-1135 (ESH); O.K.v. Bush, No. 04-CV-1136 (JDB); Begg v. Bush, No. 04-CV-1137 (RMC); El-Banna v. Bush, No. 04-CV-1144 (RWR); Gherebi v. Bush, No. 04-CV-1164 (RBW); Anam v. Bush, No. 04-CV-1194 (HHK); Almurbati v. Bush, No. 04-CV-1227 (RBW); and Abdah v. Bush, No. 04-CV-1254 (HHK).

Further, in her decision, Judge Green agreed with the decision of Judge Robertson in Hamdan v. Rumsfeld, 344 F. Supp. 2d 152, 165 (D.D.C. 2004), rev'd, 415 F.3d 33 (D.C. Cir. 2005), and concluded that the Third Geneva Convention is “self-executing” and can provide petitioners with a claim in a habeas action.⁴ 355 F. Supp. 2d at 478-80. Judge Green, however, dismissed petitioners’ remaining constitutional, statutory, international law, and treaty claims. Id. at 480-81.

Judge Green noted that her January 31, 2005 decision on respondents’ motion to dismiss or for judgment “technically applie[d] only to the eleven cases contained in the [opinion’s] caption,” but the Court nevertheless acknowledged that the opinion “addresse[d] issues common” to eight other Guantanamo Bay detainee cases that had been filed during or after the briefing and oral argument that resulted in the Court’s opinion.⁵ See id. at 452 & n.15.

On February 3, 2005, respondents filed a motion seeking certification of the January 31, 2005 order for interlocutory appeal and filed a motion to stay all the Guantanamo Bay detainee cases pending at that time, consistent with the need for these cases to proceed in a coordinated fashion. Thus, the motion was filed as a motion for certification of order for interlocutory appeal and for a stay in the eleven cases in which the January 31, 2005 order was entered, and was filed by respondents solely as a motion to stay in the other then-pending cases. Judge Green certified her January 31, 2005 decision on respondents’ motion to dismiss or for judgment for appeal and

⁴ The D.C. Circuit held in Hamdan that the Third Geneva Convention does not give rise to claims enforceable in court. See Hamdan, 415 F.3d at 40.

⁵ Belmar v. Bush, No. 04-CV-1897 (RMC); Al-Qosi v. Bush, No. 04-CV-1937 (PLF); Paracha v. Bush, No. 04-CV-2022 (PLF); Al-Marri v. Bush, No. 04-CV-2035 (GK); Zemiri v. Bush, No. 04-CV-2046 (CKK); Deghayes v. Bush, No. 04-CV-2215 (RMC); Mustapha v. Bush, No. 05-CV-22 (JR); Abdullah v. Bush, No. 05-CV-23 (RWR).

stayed proceedings in the eleven cases in which the January 31, 2005 order was entered, “for all purposes pending resolution of all appeals.” Judge Green left the decision whether to stay cases other than the eleven to the individual judges in those cases. See Order Granting in Part and Denying in Part Respondents’ Motion for Certification of Jan. 31, 2005 Orders and for Stay in In re Guantanamo Detainee Cases (Feb. 3, 2005) (Green, J.).

Various petitioners in the eleven cases sought reconsideration of Judge Green’s stay order, arguing that the Court should permit factual development and proceedings regarding detainee living conditions to go forward. See, e.g., Petrs’ Motion for Reconsideration of Order Granting Stay Pending Appeal at 9-10 (dkt. no. 203 in Al Odah, No. 02-CV-0828 (CKK)). Judge Green, however, denied the motion for reconsideration

in light of the substantial resources that would be expended and the significant burdens that would be incurred should this litigation go forward, and . . . [in] recognition that a reversal of the Court’s January 31, 2005 rulings would avoid the expenditure of such resources and incurrence of such burdens

See Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 482 (D.D.C. 2005) (Green, J.).

On February 9, 2005, pursuant to Judge Green’s certification, respondents filed a petition for interlocutory appeal of the January 31, 2005 decision with the D.C. Circuit, see 28 U.S.C. § 1292(b), and requested that the appeal proceed on an expedited basis. Further, petitioners in the eleven cases subject to Judge Green’s decision filed a cross-petition for interlocutory appeal with the D.C. Circuit and petitioners in Al-Odah appealed Judge Green’s stay order. On March 10, 2005, the D.C. Circuit accepted the interlocutory appeal. In addition, as noted above,

petitioners in Khalid and Boumediene appealed Judge Leon's decision. Oral argument in both appeals was held on September 8, 2005.

In light of these pending appeals, several of the cases pending at the time of Judge Green's decision, but that Judge Green did not stay, have been stayed pending appeal. See Paracha, No. 04-CV-2022 (PLF) (dkt. no. 49); Al Marri, No. 04-CV-2035 (GK) (dkt. no. 26); Zemiri, No. 04-CV-2046 (CKK) (dkt. no. 32); Deghayes, No. 04-CV-2215 (RMC) (dkt. no. 7); Mustapha, No. 05-CV-22 (JR) (dkt. no. 7); Abdullah, No. 05-CV-23 (RWR) (dkt. no. 16). As Judge Kessler stated in her stay order in Al Marri,

The opinions resolving Judge Leon's and Judge Green's cases encompass and discuss many of the precise issues raised in Respondents' Motion [to Stay]. Thus, until the Court of Appeals addresses these issues, the law in this Circuit is unsettled, since Judge Green and Judge Leon reached different conclusions about many of the issues before them. Requiring this case to proceed before appellate resolution of those cases therefore would involve an unnecessary expenditure of judicial resources.

Order dated March 8, 2005 in Al-Marri, No. 04-CV-2035 (GK), at 2.

Since February 3, 2005 – the date respondents moved to stay all of the Guantanamo Bay detainee cases pending at that time – over 150 new petitions, involving approximately 230 petitioners, have been filed. Respondents have filed motions to stay proceedings in these new cases for the reasons stated herein, and several Judges of this Court have stayed proceedings in the cases pending before them.⁶ The above-captioned case is part of this wave of new petitions.

⁶ See Al Mohammed v. Bush, No. 05-CV-0247 (HHK) (dkt. no. 18); El-Mashad v. Bush, No. 05-CV-0270 (JR) (dkt. no. 29); Al-Adahi v. Bush, No. 05-CV-0280 (GK) (dkt. no. 35); Al Joudi v. Bush, No. 05-CV-0301 (GK) (dkt. no. 26); Al-Wazan v. Bush, No. 05-CV-0329 (PLF) (dkt. no. 15); Al-Anazi v. Bush, No. 05-CV-0345 (JDB) (dkt. no. 21); Alhami v. Bush, No. 05-CV-0359 (GK) (dkt. no. 20); Ameziane v. Bush, No. 05-CV-0392 (ESH) (dkt. no. 12); Sliti v. Bush, No. 05-CV-0429 (RJL) (dkt. no. 8); M.C. v. Bush, No. 05-CV-0430 (ESH) (dkt. no. 10);

Kabir v. Bush, No. 05-CV-0431 (RJL) (dkt. no. 10); Qayed v. Bush, No. 05-CV-0454 (RMU) (dkt. no. 4); Al-Shihry v. Bush, No. 05-CV-0490 (PLF) (dkt. no. 14); Aziz v. Bush, No. 05-CV-492 (JR) (dkt. no. 16); Qassim v. Bush, No. 05-CV-0497 (JR) (dkt. no. 14); Al-Oshan v. Bush, No. 05-CV-0520 (RMU) (dkt. no. 12); Tumani v. Bush, No. 05-CV-0526 (RMU) (dkt. no. 5); Al-Oshan v. Bush, No. 05-CV-0533 (RJL) (dkt. no. 6); Al Shamri v. Bush, No. 05-CV-0551 (RWR) (dkt. no. 10); Salahi v. Bush, No. 05-CV-0569 (JR) (dkt. no. 8); Mammar v. Bush, No. 05-CV-0573 (RJL) (dkt. no. 5); Al-Sharekh v. Bush, No. 05-CV-0583 (RJL) (dkt. no. 9); Magram v. Bush, No. 05-CV-0584 (CKK) (dkt. no. 9); Al Rashaidan v. Bush, No. 05-CV-0586 (RWR) (dkt. no. 10); Mokit v. Bush, No. 05-CV-0621 (PLF) (dkt. no. 13); Al Daini v. Bush, No. 05-CV-0634 (RWR) (dkt. no. 10); Ahmed v. Bush, No. 05-CV-0665 (RWR) (dkt. no. 16); Battayav v. Bush, No. 05-CV-0714 (RBW) (dkt. no. 12); Adem v. Bush, No. 05-CV-0723 (RWR) (dkt. no. 13); Hamlily v. Bush, No. 05-CV-0763 (JDB) (dkt. no. 10); Imran v. Bush, No. 05-CV-0764 (CKK) (dkt. no. 6); Al Habashi v. Bush, No. 05-CV-0765 (EGS) (Minute Order dated September 23, 2005); Al Hamamy v. Bush, No. 05-CV-0766 (RJL) (dkt. no. 6); Hamoodah v. Bush, No. 05-CV-0795 (RJL) (dkt. no. 13); Rahmattullah v. Bush, No. 05-CV-0878 (CKK) (dkt. no. 3); Mohammed v. Bush, No. 05-CV-0879 (RBW) (dkt. no. 4); Nasrat v. Bush, No. 05-CV-0880 (ESH) (dkt. no. 4); Slahi v. Bush, No. 05-CV-0881 (RWR) (dkt. no. 5); Bostan v. Bush, No. 05-CV-0883 (RBW) (dkt. no. 4); Chaman v. Bush, No. 05-CV-0887 (RWR) (dkt. no. 7); Gul v. Bush, No. 05-CV-0888 (CKK) (dkt. no. 3); Basardh v. Bush, No. 05-CV-0889 (ESH) (dkt. no. 4); Nasrullah v. Bush, No. 05-CV-0891 (RBW) (dkt. no. 4); Shaaban v. Bush, No. 05-CV-0892 (CKK) (dkt. no. 3); Sohail v. Bush, No. 05-CV-0993 (RMU) (dkt. no. 3); Tohirjanovich v. Bush, No. 05-CV-0994 (JDB) (dkt. no. 4); Al Karim v. Bush, No. 05-CV-0998 (RMU) (dkt. no. 3); Al-Khalaqi v. Bush, No. 05-CV-0999 (RBW) (dkt. no. 3); Kahn v. Bush, No. 05-CV-1001 (ESH) (dkt. no. 3); Mangut v. Bush, No. 05-CV-1008 (JDB) (dkt. no. 2); Hamad v. Bush, No. 05-CV-1009 (JDB) (dkt. no. 4); Khan v. Bush, No. 05-CV-1010 (RJL) (dkt. no. 3); Ali Shah v. Bush, No. 05-CV-1012 (ESH) (dkt. no. 3); Salaam v. Bush, No. 05-CV-1013 (JDB) (dkt. no. 2); Al-Hela v. Bush, No. 05-CV-1048 (RMU) (dkt. no. 12); Khalifh v. Bush, No. 05-CV-1189 (JR) (dkt. no. 9); Zalita v. Bush, No. 05-CV-1220 (RMU) (dkt. no. 3); Abdulzاهر v. Bush, No. 05-CV-1236 (RWR) (dkt. no. 12); Aminullah v. Bush, No. 05-CV-1237 (ESH) (dkt. no. 3); Ghalib v. Bush, No. 05-CV-1238 (CKK) (dkt. no. 3); Al Khaiy v. Bush, No. 05-CV-1239 (RJL) (dkt. no. 5); Pirzai v. Bush, No. 05-CV-1242 (RCL) (dkt. no. 4); Peerzai v. Bush, No. 05-CV-1243 (RCL) (dkt. no. 4); Alsawam v. Bush, No. 05-CV-1244 (CKK) (dkt. no. 3); Mohammadi v. Bush, No. 05-CV-1246 (RWR) (dkt. no. 7); Al Ginco v. Bush, No. 05-CV-1310 (RJL) (dkt. no. 5); Ullah v. Bush, No. 05-CV-1311 (RCL) (dkt. no. 5); Al Bihani v. Bush, No. 05-CV-1312 (RJL) (dkt. no. 4); Mohammed v. Bush, No. 05-CV-1347 (GK) (dkt. no. 7); Saib v. Bush, No. 05-CV-1353 (RMC) (Minute Order dated August 1, 2005); Hatim v. Bush, No. 05-CV-1429 (RMU) (dkt. no. 16); Al-Subaiy v. Bush, No. 05-CV-1453 (RMU) (dkt. no. 14); Dhiab v. Bush, No. 05-CV-1457 (GK) (Minute Order dated August 29, 2005); Sadkhan v. Bush, No. 05-CV-1487 (RMC) (dkt. no. 13); Faizullah v. Bush, No. 05-CV-1489 (RMU) (dkt. no. 3); Faraj v. Bush, No. 05-CV-1490 (PLF) (dkt. no. 11); Ahmad v. Bush, No. 05-CV-1492 (RCL) (dkt. no. 3); Amon v. Bush, No. 05-CV-1493 (RBW) (dkt. no. 3); Kiyemba v. Bush, No. 05-CV-1509 (RMU) (dkt. no. 8); Attash v. Bush, No. 05-CV-1592 (RCL) (dkt. no. 12); Mamet v. Bush, No.

For the reasons explained below, the proceedings in this case should be stayed, and factual returns should not be required, pending resolution of all appeals.

ARGUMENT

I. The Court Should Grant a Stay of the Above-Captioned Guantanamo Bay Detainee Case Pending Resolution of the Pending Related Appeals.

In light of the extraordinary issues presented in the above-captioned case that must be resolved on appeal, respondents seek a stay of this case, which presents issues, indeed core claims, that are directly raised in, or will be affected by decisions in, the appeals in In re Guantanamo Detainee Cases, Khalid, and Boumediene. The outcome of the appeals will determine how all of the Guantanamo detainee cases should proceed, if at all. In light of this fact, this case should not go forward prior to obtaining such guidance from the D.C. Circuit through the resolution of the appeals.⁷

05-CV-1602 (ESH) (dkt. no. 9); Akhtiar v. Bush, No. 05-CV-1635 (PLF) (dkt. no. 10); Ghanem v. Bush, No. 05-CV-1638 (CKK) (dkt. no. 7); Al-Badah v. Bush, No. 05-CV-1641 (CKK) (dkt. no. 12); Zaid v. Bush, No. 05-CV-1646 (JDB) (dkt. no. 12); Bin Amir v. Bush, No. 05-CV-1724 (RMU) (dkt. no. 11); Sameur v. Bush, No. 05-CV-1806 (CKK) (dkt. no. 5); Al-Harbi v. Bush, No. 05-CV-1857 (CKK) (dkt. no. 3).

⁷ The Court has the authority to stay proceedings in habeas cases, even prior to the filing of a response. Pursuant to the Rules Governing Section 2254 Cases in the United States District Courts (the “2254 Rules”), which are applicable to petitions for writ of habeas corpus other than those arising under 28 U.S.C. § 2254, such as the petitions in these cases, see 2254 Rule 1(b), a court may extend the deadline for responses to habeas petitions beyond the time limits set forth in 28 U.S.C. § 2243 — the 2254 Rules do not indicate a fixed deadline for responding to habeas petitions, and they supersede the time limits set forth in 28 U.S.C. § 2243. Rule 4 provides that “the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order. . . .” See also Bleitner v. Welborn, 15 F.3d 652, 653-54 (7th Cir. 1994) (“[T]he Rules Governing Section 2254 Cases in the United States District Courts, which have the force of a superseding statute, 28 U.S.C. § 2072(b) . . . loosened up the deadline for responses. Rule 4 leaves it up to the district court to fix the deadline.”); Castillo v. Pratt, 162 F. Supp. 2d 575, 577 (N.D. Tex. 2001) (denying § 2241 petitioner’s request for expedited consideration because “[t]he discretion afforded by Rule 4 of the 2254 Rules

The petition in this case, which seeks to challenge the legality of the detention of a foreign national detained at Guantanamo Bay as an enemy combatant, raises legal issues that were squarely addressed by the opinions in In re Guantanamo Detainee Cases, Khalid, and Boumediene and that are raised in the appeals, including: (1) whether the petitioners have stated valid claims under the Fifth Amendment to the United States Constitution and, if so, whether the procedures implemented by respondents to determine the status of petitioners violate their Fifth Amendment rights; (2) whether the petitioners have stated valid claims under the Third Geneva Convention;⁸ and (3) whether the petitioners have stated valid claims based on various other legal theories, including other Constitutional provisions, other international treaties, Military regulations, the Administrative Procedures Act, the Alien Tort Statute, and customary international law. It makes no sense for proceedings related to the merits of this case, such as the submission of a factual return in response to an order to show cause regarding the issuance of a writ of habeas corpus, to go forward when decisions from the D.C. Circuit on the related

“prevails” over the strict time limits of 28 U.S.C. § 2243”); Kramer v. Jenkins, 108 F.R.D. 429, 431 (N.D. Ill. 1985) (denying § 2241 petitioner’s motion for correction of court scheduling order because “in the conflict between Rule 4 of the 2254 Rules and 28 U.S.C. § 2243, Rule 4 must prevail”). Furthermore, the 2254 Rules have provided courts with the discretion to consider the burdens involved in filing responses to habeas petitions when implementing case management schedules. See Advisory Committee Notes to 2254 Rules; see also Lonchar v. Thomas, 517 U.S. 314, 325 (1996) (stating that the 2254 Rules confer “ample discretionary authority” on district courts “to tailor the proceedings” in habeas cases). See also Landis v. North American Co., 299 U.S. 248, 254-55 (1936) (“The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”); id. at 256 (noting propriety of stay in cases “of extraordinary public moment”).

⁸ See footnote 4, supra.

Guantanamo detainee appeals will determine the legal analyses applicable to this case and, indeed, whether and how this case should proceed.

Also, as Judge Green recognized, further proceedings consistent with her January 31, 2005 rulings, including, in the view of petitioners in those cases, extensive discovery and factual development, promise to impose “significant burdens” that may be avoided, depending on the outcome of the appeals. See Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases, 355 F. Supp. 2d 482. And as Judge Kessler concluded, “the law in this Circuit is [currently] unsettled,” given the contrary decisions of Judges Green and Leon. Al Marri, No. 04-CV-2035 (GK) (dkt. no. 26). Requiring this case to proceed before resolution of the appeals “would involve an unnecessary expenditure of judicial resources.” Id. Indeed, any proceedings that are permitted to go forward very likely would have to be revisited or relitigated once the appeals are decided and the Court of Appeals provides guidance regarding handling of the claims in the Guantanamo detainee cases.

For these reasons, this case should be stayed pending guidance from the D.C. Circuit, through the various appeals, regarding the issues in this case, including whether and how to proceed.

II. Respondents Should Not Be Required to Submit Factual Returns During the Pendency of the Stay.

Although respondents do not object to entry of the protective order and related, supplementary orders previously entered in other Guantanamo detainee cases to enable counsel to meet and correspond with properly represented petitioners in a privileged manner at Guantanamo Bay on appropriate matters related to this case, it makes no sense for the

government to process and submit factual returns⁹ with respect to petitioners when the D.C. Circuit will be considering the proper scope of these habeas proceedings, including whether the claims can be dismissed without reference to specific factual returns. See Khalid, 355 F. Supp. 2d 311 (dismissing petitioners' claims in their entirety). Even if counsel had access to factual returns, they would not be able to share classified information in the returns with petitioners. See Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba in In re Guantanamo Detainee Cases, No. 02-CV-0299, et al. (D.D.C. Nov. 8, 2004), ¶ 30. Thus, there is no reason why counsel need access to factual returns at this time.¹⁰

Moreover, the submission of factual returns which, in any event, may ultimately be unnecessary, burdens the government's resources and risks the inadvertent disclosure of classified information. Each factual return must be obtained from the Department of Defense, and then reviewed by agencies who provided source information to DoD to ensure that information disclosed to counsel in the returns is in accordance with all applicable statutes, regulations and Executive Orders. Respondents must then prepare both public and classified versions of the factual returns for submission to the Court and counsel. Each return can range

⁹ A factual return for a petitioner in a Guantanamo detainee case typically has consisted of the record of proceedings before the Combatant Status Review Tribunal that confirmed petitioner's status as an enemy combatant properly subject to detention. The factual return is separate from briefing on legal issues in the cases. Factual returns include both classified and unclassified material.

¹⁰ In this vein, various Judges of this Court have declined to require factual returns during the pendency of the stay. See, e.g., Sliti v. Bush, No. 05-CV-0429 (RJL) (dkt. no. 5); Imran v. Bush, No. 05-CV-0764 (CKK) (dkt. no. 6); Attash v. Bush, No. 05-CV-1592 (RCL) (dkt. no. 12).

from dozens to hundreds of pages, depending upon the circumstances. Thus, respondents face an immense logistical burden to process and file the returns, especially on the short, simultaneous schedules being requested by petitioners in the various cases. Further, submission of these returns vastly expands access to classified information contained in the returns, thereby increasing the risks of inadvertent or other disclosure or compromise of the information. These burdens and risks, however, could be rendered completely unnecessary, depending on the outcome of the appeals. Cf. Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases, 355 F. Supp. 2d 482 (staying cases so as to avoid expenditure of “substantial resources” and imposition of “significant burdens” that might not be necessary depending on outcome of appeal).

Although certain Judges of this Court have ordered respondents to submit factual returns in cases that are otherwise stayed, respondents oppose the submission of factual returns in the above-captioned case for the reasons stated herein. If submission of factual returns were to go forward at all, it could only be done pursuant to a coordinated and reasonable schedule, taking account of the fact that petitioners in all the recently filed cases are seeking factual returns and recognizing the logistical burdens posed by an undertaking to produce returns in the cases. Given these circumstances, a schedule for the rolling production of factual returns in these cases (and potentially other cases) over the next 10 to 12 weeks would be appropriate. In a number of other recent cases, the government has been given between 90 and 120 days to file factual returns, and respondents request that the Court impose a similar schedule, if the Court decides to require a factual return. See e.g., Battayav, No. 05-CV-0714 (RBW) (dkt. no. 12) (imposing 120-day schedule); Al-Joudi, No. 05-CV-0301 (GK) (dkt. no. 26) (imposing 90-day schedule);

Al-Wazan, No. 05-CV-0329 (PLF) (dkt. no. 37) (imposing 90-day schedule); Al-Anazi, No. 05-CV-0345 (JDB) (dkt. no. 21) (imposing 120-day schedule); Ameziane, No. 05-CV-392 (ESH) (dkt. no. 12) (imposing 90-day schedule); Qayed, No. 05-CV-0454 (RMU) (dkt. no. 5) (imposing 90-day schedule).

CONCLUSION

For these reasons, the Court should stay further proceedings in this case, except as noted above, pending resolution of the appeals of Judge Leon's decision in Khalid and Boumediene and Judge Green's January 31, 2005 decision in In re Guantanamo Detainee Cases. Petitioners' motion for immediate issuance of a writ of habeas corpus or order to show cause should be denied. A proposed order is attached.

Dated: November 18, 2005

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

DOUGLAS N. LETTER
Terrorism Litigation Counsel

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL
JAYFI, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2104 (RBW)

(PROPOSED) ORDER

Having considered Respondents' Motion to Stay Proceedings Pending Related Appeals, the opposition filed thereto, and any reply, as well as the entire record in this case, and it appearing that good cause exists for granting the motion, it is hereby

ORDERED that the Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, first issued on November 8, 2004 in In re Guantanamo Detainee Cases, 344 F. Supp. 2d 174 (D.D.C. 2004), the Order Supplementing and Amending Filing Procedures Contained in November 8, 2004 Amended Protective Order, first issued on December 13, 2004 in In re Guantanamo Detainee Cases, and the Order Addressing Designation Procedures for "Protected Information," first issued on November 10, 2004 in In re Guantanamo Detainee Cases shall apply in the above-captioned case. It is

FURTHER ORDERED that the above-captioned case is stayed pending resolution of all appeals in Khalid v. Bush, Boumediene v. Bush, Nos. 04-CV-1142 (RJL), 04-CV-1166 (RJL),

355 F. Supp. 2d 311 (D.D.C. 2005), appeals docketed, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005), appeal on petition for interlocutory appeal, No. 05-5064 (D.C. Cir. Mar. 10, 2005). It is

FURTHER ORDERED that petitioners' motion for immediate issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2243 or, alternatively, to issue an order to show cause is DENIED.

IT IS SO ORDERED.

DATED: _____

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AHMED DOE, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1458 (ESH)

ADIL BIN MUHAMMAD AL
WIRGHI, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1497 (RCL)

NABIL (Last Name Unknown), *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1504 (RMC)

ABBAR SUFIAN AL HAWARY, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1505 (RMC)

SHAFIIQ (Last Name Unknown), *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1506 (RMC)

HAMID AL RAZAK, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1601 (GK)

KADEER KHANDAN,

Petitioner,

v.

GEORGE W. BUSH,

President of the United States,

et al.,

Respondents.

USAMA HASAN ABU KABIR, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,

President of the United States,

et al.,

Respondents.

MUHAMMED QASIM, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,

President of the United States,

et al.,

Respondents.

Civil Action No. 05-CV-1697 (RBW)

Civil Action No. 05-CV-1704 (JR)

Civil Action No. 05-CV-1779 (JDB)

ABU ABDUL AZIZ, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1864 (HHK)

ISMAIL ALKHEMISI, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-1983 (RMU)

BENDER AYED HAMOUD HEZAM
AL-OTEIBI AL-SHABANY, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2029 (JDB)

ZAKIRJAN, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2053 (HHK)

DR. ABU MUHAMMED, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2087 (RMC)

ISSAM HAMID ALI BIN ALI AL
JAYFI, *et al.*,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2104 (RBW)

ATTORNEY APPEARANCE

Undersigned counsel, Terry M. Henry, hereby enters his appearance as one of the counsel for respondents in the above-captioned cases.

Dated: November 21, 2005

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

DOUGLAS N. LETTER
Terrorism Litigation Counsel

/s/ Terry M. Henry

JOSEPH H. HUNT (D.C. Bar No. 431134)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

V.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

**PETITIONERS' PARTIAL CONSENT TO RESPONDENTS' MOTION TO STAY
PROCEEDINGS AND REPLY TO RESPONDENTS' OPPOSITION TO MOTION FOR
WRIT OF HABEAS CORPUS OR ORDER TO SHOW CAUSE**

I. Petitioners Will Consent to A Stay of These Proceedings Subject to Several Limited, Essential Conditions

Petitioners recognize that the Judges of this District have consistently stayed the Guantánamo detainee cases assigned to them — most, subject to certain limitations — pending the outcome of the appeals of *Khalid v. Bush*, *Boumediene v. Bush*, 355 F.Supp. 2d 311 (D.D.C. 2005), *appeals docketed*, Nos. 05-5062, 05-5063 (D.C.Cir. Mar. 2, 2005), and *In re Guantánamo Detainee Cases*, 355 F.Supp. 2d 443 (D.D.C. 2005), *appeal on petition for interlocutory appeal docketed at* No. 05-5064 (D.C.Cir. Mar. 10, 2005). Under these circumstances, Petitioners will not oppose entry of an appropriate order staying these proceedings until those appeals are resolved.

Any stay order, however, should be subject to several modest but essential limitations.¹

First, Respondents should be required to produce factual returns for each Petitioner within a reasonable timeframe. These returns are vitally important to our representation of Petitioners. As Judge Kennedy wrote in requiring production of returns in one Guantánamo case notwithstanding a stay of the action, “petitioners’ counsel must have access to [the returns] in order to develop a meaningful understanding of the basic factual allegations ... and prepare for consultation with their clients.” *Al-Mohammed v. Bush*, 05-CV-00247, slip op. at 2-3 (D.D.C. Apr. 30, 2005). So too here.

Second, while Petitioners wait for their factual returns (we propose sixty days for this), Respondents should be required to provide the following unclassified information concerning each Petitioner:

- *whether he is alive and being held in Guantánamo.* Respondents already have indicated that two Petitioners are held in Guantánamo but state they have been unable to identify the other four. *See* Respondents’ Motion to Stay (“Stay Motion”) at 2, note 2. Petitioners simply propose that Respondents be required to work with Petitioners to resolve the identification and location of the remaining four Petitioners.
- *whether he has completed his Combatant Status Review Tribunal (“CSRT”) and, if so, has been designated an Enemy Combatant or given some other status.* As discussed further below, the Department of Defense has completed the CSRT process with respect to most, if not all, Guantánamo detainees. We ask that Respondents be required to confirm whether each Petitioner has been put through a CSRT and disclose the resulting designation for each.
- *his Internee Classification Number (“ICN”).* This is a number the DOD assigns to each detainee and uses to identify him on an ongoing basis. We request

¹ Petitioners agree with Respondents that the protective order (and subsequent supplemental orders) applicable to the other Guantánamo detainee cases should be entered here. *See* Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantánamo Bay, Cuba and related orders cited in Motion to Stay at 2 “Protective Order”).

production of Petitioners' ICNs for use in addressing legal mail and other communications to them.

Third, the stay order should require Respondents to preserve all potentially relevant documents and information concerning Petitioners and the circumstances of their capture and detention. One of the risks of staying Petitioners' *habeas* action is that, with the passage of time, relevant information could be lost or destroyed in the ordinary course of Respondents' business. The potential prejudice to Petitioners from this loss of evidence is all too plain. For these reasons, inclusion of a preservation obligation in any stay order is necessary "to preserve the status quo pending resolution of [the Guantanamo] appeals." Order, *Abdah v. Bush*, 04-CV-1254 (June 10, 2005)(HHK)(entering preservation order). By contrast, an obligation to preserve evidence imposes no burden or prejudice on Respondents. *See* Order, *Al-Marri v. Bush*, 04-CV-2035 (March 7, 2005)(GK)("entering a preservation order will inflict no harm or prejudice on [Respondents]."); Order, *Ali Ahmed v. Bush*, 05-CV-1678(November 16, 2005)(GK) (ordering the preservation and maintenance of "all evidence, documents and information, *without limitation* regarding the treatment, detention and grounds for detention" in conformity with Fed. R. Civ. P. 33 for petitioner.) (emphasis added); Memorandum Opinion and Order, *El-Banna v. Bush*, 04-CV-1144 (July 18, 2005) (RWR) ("[t]he requested order imposes no greater obligation on respondents than the federal discovery rules' preservation obligations impose on a litigant in a typical civil lawsuit.") Accordingly, and as reflected in the accompanying Proposed Stay Order, Petitioners request that any stay order include the requirement that:

Respondents shall preserve and maintain all evidence, documents and information, without limitation, now or ever in Respondents' possession, custody or control, regarding the individual detained petitioners.

Memorandum Opinion and Order, *El-Banna v. Bush*, 04-CV-1144 (July 18, 2005)(RWR)(granting motion for entry of preservation order pending stay.)²

Petitioners have filed herewith for the Court's consideration a Proposed Stay Order that provides for each of these conditions.

II. Respondents' Arguments Against Production of Factual Returns Are Unavailing; Both the Returns and The Interim Information Sought Can Be Provided Promptly With Minimal Burden

In their Motion to Stay, Respondents concede that other Judges in this District have required production of factual returns in connection with ordering the stay of Guantánamo detainee cases. *See* Motion to Stay at 13-14, and cases cited therein.³ Yet, Respondents point to no specific examples of how this obligation has disrupted their day-to-day business or otherwise unduly burdened them. Rather, Respondents recite, in the most general of terms, "the immense logistical burden to process and file the returns." *Id.* at 13. This is gross overstatement. A factual return for a detainee is simply "the record of proceedings before the [CSRT]." *Id.* at 12, note 9. Those proceedings already took place. The record of those proceedings already exists and is in the hands of the DOD. *See id.* at 12.

Moreover, classification decisions with respect to information presented during the CSRTs generally takes place before the start of those proceedings, and those proceedings are subject to legal review when they are completed and the detainee's status is determined. *See*,

² Because, in Petitioners' view, an interim requirement to preserve evidence is inextricably linked to the relief Respondents request in their Motion to Stay, Petitioners advance it as a modification to Respondents' proposed stay order, rather than separately moving for entry of a preservation order. If the Court requires a separate motion on this issue, Petitioners of course will file it promptly.

³ Petitioners note that certain Judges of this District have declined to require factual returns during the pendency of the stay. *See* Motion to Stay at Note 10.

e.g., Memorandum from Bree A. Ermintrout to Director of CSRT, Jan. 19, 2005, in Factual Return for Petitioner Abdul-Salam Ali Abdularahman Al-Hela, *Al-Hela v. Bush*, 05-CV-01048 (RMU)(D.D.C. June 15, 2005)(Attached as Exhibit A to Declaration of Wesley R. Powell Declaration (“Powell Declaration”); Memorandum from James R. Crisfield Jr. to Director of CSRT, October 14, 2004, *Factual Return for Petitioner Ridouane Khalid, Khalid v. Bush*, 04-CV-1142 (RJL) (D.D.C, Oct. 18, 2004) (Attached as Exhibit B to Powell Declaration). At this stage, what remains in producing the factual returns is largely ministerial, and certainly can be accomplished within a reasonable period of time, like 60 days. Moreover, to the extent Respondents need additional time to prepare a redacted return for public filing, Petitioners would agree to accept production of the classified return at the secure facility (designated in the Protective Order) in sixty days, and Respondents could file a redacted version later. Finally, the limited, unclassified information on Petitioners’ status we seek in the interim could be produced in very short order by letter or email.

Respondents claim that the burden associated with production of factual returns — however minimal — is unjustified because it will prove “unnecessary” if the Court of Appeals rules in their favor in the pending appeals. Motion to Stay at 12. Of course, Respondents tried this argument before Judge Green in seeking to avoid production of factual returns while their motions to dismiss were pending the fall of 2004, but Judge Green ordered the returns produced, notwithstanding the possibility that a decision on the motion could moot the returns. Moreover, as Respondents recognize, a number of other Judges in this District have ordered factual returns produced, while otherwise staying Guantánamo detainee proceedings. *See* Motion to Stay at 13-14, and cases cited therein. And, any risk that production of these returns will prove “unnecessary” as a result of the pending appeals is outweighed by Petitioners’ need to proceed

with an investigation of Respondents' allegations (as reflected in the returns) against them now, so that they may proceed immediately with a challenge to their detention in the event the Court of Appeals rules in favor of the detainees.

Finally, Respondents complain, without basis, that providing returns here would risk disclosure of the classified information contained in them. Of course, the only persons eligible to review classified returns are counsel who have received national security clearance and who submit to the Protective Order that all parties agree should apply to this case. And, in granting security clearance to an individual lawyer, the Government indicates that "the attorney can be trusted with information at that level of clearance." *Al Odah v. United States*, 346 F. Supp 1, 14 (D.D.C. 2004). Accordingly, Respondents cannot credibly claim that undue risk of exposure will result if lawyers, whom the Government considers trustworthy, review classified information subject to the restrictions of the Protective Order.

CONCLUSION

For the reasons discussed above, Petitioners consent to the proposed stay of proceedings, subject to the reasonable conditions outlined above.

Dated: November 29, 2005
New York, NY

Respectfully submitted,

Counsel for Petitioners/Plaintiffs:



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* Not admitted in the District of Columbia District but qualified to practice as *pro bono* counsel pursuant to L.Cv.R. 83.2(9).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

DECLARATION OF ATTORNEY WESLEY R. POWELL

I, Wesley R. Powell, declare under penalty of perjury that the following is true to the best of my knowledge, recollection and belief:

1. My name is Wesley R. Powell. I submit this Declaration in support of Petitioners' Partial Consent to Respondents' Motion to Stay Proceedings and Reply to Respondents' Opposition to Motion for Writ of Habeas Corpus or Order to Show Cause in the above-captioned matter. I base this Declaration on personal knowledge.
2. I am an attorney and currently practice with the law firm of Hunton & Williams LLP, counsel of record for Petitioners Issam Hamid Ali Bin Ali Al Jayfi, Othman Ali Mohammed Al Shamrany, Khalid Mohammed Al Thabbi, Ali Hamza Ahmed Suliman Bahloul, Saleh Mohammed Seleh Al Thabbii and Abdu Al Qader Ahmed Hussain, in the above-captioned action.
3. Attached hereto as Exhibit A is what I believe to be a true and correct copy of a Memorandum from Bree A. Ermintrout to the Director of the Combatant Status Review Tribunal, dated January 18, 2005, which was included in the publicly filed Factual Return for Petitioner Abdul-Salam Ali Abdularahman Al-Hela, in *Al-Hela v. Bush*, 05-CV-01-48.
4. Attached hereto as Exhibit B is what I believe to be a true and correct copy of a Memorandum from James R. Crisfield, Jr. to the Director of the Combatant Status Review Tribunal, dated October 14, 2004, which was included in the publicly filed Factual Return for Petitioner Ridouane Khalid, in *Khalid v. Bush*, 04-CV-1142.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 29 November 2005


Wesley R. Powell

EXHIBIT A

18 Jan 05

MEMORANDUM

From: Assistant Legal Advisor
To: Director, Combatant Status Review Tribunal
Via: Legal Advisor *SLC*

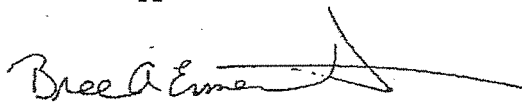
Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]

Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004

Encl: (1) Appointing Order for Tribunal # 19 of 4 November 2004
(2) Record of Tribunal Proceedings

1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of and actively participated in the Tribunal process. The detainee provided a sworn oral statement at the Tribunal hearing.
 - b. The Tribunal was properly convened and constituted by enclosure (1).
 - c. The Tribunal substantially complied with all provisions of references (a) and (b).
 - d. The detainee did not request that any witnesses or evidence be produced.
 - e. The Tribunal's decision that detainee # [REDACTED] is properly classified as an enemy combatant was unanimous.
2. The proceedings and decision of the Tribunal as reflected in enclosure (2) are legally sufficient and no corrective action is required.
3. I recommend that the decision of the Tribunal be approved and the case be considered final.


BREE A. ERMENTROUT
CDR, JAGC, USNR

UNCLASSIFIED

EXHIBIT B

UNCLASSIFIED

14 Oct 04

MEMORANDUM

From: Legal Advisor

To: Director, Combatant Status Review Tribunal

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]Ref: (a) Deputy Secretary of Defense Order of 7 July 2004
(b) Secretary of the Navy Implementation Directive of 29 July 2004Encl: (1) Appointing Order for Tribunal #8 of 13 September 2004
(2) Record of Tribunal Proceedings

1. Legal sufficiency review has been completed on the subject Combatant Status Review Tribunal in accordance with references (a) and (b). After reviewing the record of the Tribunal, I find that:

- a. The detainee was properly notified of the Tribunal process and made a sworn statement at the Tribunal.
- b. The Tribunal was properly convened and constituted by enclosure (1).
- c. The Tribunal complied with all provisions of references (a) and (b). Note that some information in exhibits R-5 and R-6 was redacted. The FBI properly certified in exhibits R-2 and R-3 that the redacted information would not support a determination that the detainee is not an enemy combatant.
- d. The detainee requested five witnesses. One, a detainee at Guantanamo Bay Naval Base, was found by the Tribunal President to be reasonably available and testified at the tribunal. The other four witnesses requested by the detainee were former detainees who had been released from detention and repatriated to France. The Tribunal President determined that these four witnesses were not reasonably available. The President also determined that the testimony of these four witnesses would be almost identical to that of the witness who was reasonably available. Therefore, the President determined that their testimony would be cumulative with that of the first witness and not helpful to the Tribunal.

In my opinion, the Tribunal President did not abuse his discretion in determining that the testimony of the four repatriated witnesses would have been cumulative with the testimony of the witness who testified. Documentation regarding the President's determination of their reasonable availability is lacking, however. The Personal Representative, in comments attached to the Record of Proceedings, states that the Tribunal failed to undertake adequate efforts to locate the witnesses. Paragraph G(10) of enclosure (1) of reference (b) requires the Tribunal President to document the basis for his decisions on reasonable availability; to include efforts undertaken to procure the

UNCLASSIFIED

Subj: LEGAL SUFFICIENCY REVIEW OF COMBATANT STATUS REVIEW TRIBUNAL
FOR DETAINEE ISN # [REDACTED]

presence of the witness and alternatives considered or used in place of in-person testimony. Since the Tribunal did not document what efforts were made to locate these individuals, if any, I cannot render an opinion, as required by paragraph I(7) of enclosure (1) of reference (b), as to the sufficiency of the decision. Nonetheless, since the President found their expected testimony to be cumulative, he did not need to reach a finding on whether they were reasonably available and there is no prejudice to the detainee from the poor documentation.

The detainee also requested that additional evidence be produced, including his passport, visa, and a return airline ticket from Afghanistan to England that had been taken from him at the time of his capture. The Tribunal searched for the documents, but they could not be located. In my opinion the Tribunal was correct in determining that these documents were not reasonably available.

e. The Tribunal's decision that detainee # [REDACTED] is properly classified as an enemy combatant was unanimous.

f. The detainee's Personal Representative was given the opportunity to review the record of proceedings and submitted comments to the Tribunal. Those comments are addressed in paragraph 1(d), above.

2. The proceedings and decision of the Tribunal are legally sufficient and no corrective action is required.

3. I recommend that the decision of the Tribunal be approved and the case be considered final.


JAMES R. CRISFIELD JR.
CDR, JAGC, USN

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

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) **Case No. 1:05-CV-02104 (RBW)**
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DECLARATION OF SERVICE

Michelle Kass hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746,
that:

I am a Paralegal at the law firm of Hunton & Williams LLP, attorneys for
Petitioners/Plaintiffs.

That on November 29, 2005, I caused to be served true copies of Petitioners' Partial
Consent to Respondents' Motion to Stay Proceedings and Reply to Respondents' Opposition to
Motion for Writ of Habeas Corpus or Order to Show Cause, along with the Declaration of
Attorney Wesley R. Powell and attached Exhibits A-B and [Proposed] Order at the addresses
listed below via Certified Mail, Return Receipt Requested, by depositing the same in a duly
enclosed and sealed wrapper with the correct postage thereon, in an official letter box duly
maintained by the Government of the United States of American within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 29, 2005.

Michelle Kass

Michelle Kass

TO: George W. Bush
President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Donald Rumsfeld
Secretary of Defense
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Brigadier General Jay Hood
United States Army
Commander, Joint Task Force
JTF-GTMO
APO AE 09360

Colonel Mike Buamgarner
United States Army
Commander, Joint Detention Operations Group
JTF-GTMO
APO AE 09360

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

(PROPOSED) ORDER

Having considered Respondents' Motion to Stay Proceedings Pending Related Appeals, the opposition filed thereto, and any reply, as well as the entire record in this case, it is hereby:

ORDERED that the Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantánamo Bay, Cuba, first issued on November 8, 2004 in In re Guantánamo Detainee Cases, 344 F. Supp. 2d 174 (D.D.C. 2004), the Order Supplementing and Amending Filing Procedures Contained in November 8, 2004 Amended Protective Order, first issued on December 13, 2004 in In re Guantánamo Detainee Cases, and the Order Addressing Designation Procedures for "Protected Information," first issued on November 10, 2004 in In re Guantánamo Detainee Cases **SHALL** apply in the above-captioned case.

FURTHER ORDERED that the above-captioned case is **STAYED** pending resolution of all appeals in Kahlid v. Bush, Boumediene v. Bush, Nos. 04-CV-1142 (RJL), 04-CV-1166 (RJL), 355 F. Supp. 2d 311 (D.D.C. 2005), appeals docketed, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and In re Guantánamo Detainee Cases, No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005), appeal on petition for interlocutory appeal, No. 05-5064 (D.C. Cir. Mar. 10, 2005).

FURTHER ORDERED that the Respondents **SHALL** provide Petitioners' counsel the following unclassified information within 30 days of the entrance of this Order: i) whether each Petitioner is alive and being held in Guantánamo; ii) whether each Petitioner has completed his Combatant Status Review Tribunal and, if so, whether he has been designated an Enemy Combatant or has been given some other status; iii) each Petitioners' Internee Classification Number ("ICN").

FURTHER ORDERED that the Respondents **SHALL** file factual returns regarding each Petitioner within 60 days of this Order.

FURTHER ORDERED that Respondents **SHALL** preserve and maintain all evidence, documents and information, without limitation, now or ever in Respondents' possession, custody or control, regarding the individual detained Petitioners.

IT IS SO ORDERED.

DATED: _____

REGGIE B. WALTON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL
JAYFI, et al.,

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 05-CV-2104 (RBW)

**RESPONDENTS' REPLY MEMORANDUM IN SUPPORT OF
MOTION TO STAY PROCEEDINGS PENDING RELATED APPEALS AND
OPPOSITION TO PETITIONERS' MOTION FOR THE IMMEDIATE ISSUANCE
OF WRITS OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2243 OR,
ALTERNATIVELY, TO ISSUE AN ORDER TO SHOW CAUSE**

Respondents hereby submit this reply memorandum in support of their motion to stay proceedings pending related appeals and their opposition to petitioners' motion for the immediate issuance of writs of habeas corpus pursuant to 28 U.S.C. § 2243 or, alternatively, to issue an order to show cause.

Petitioners' counsel characterizes his opposition as consenting to a partial stay, that is, he seeks various conditions on any stay in the case, including the provision of factual returns and issuance of a preservation order. Respondents oppose any such conditions on a stay and, as explained below, such conditions should be rejected. As an initial matter, however, as noted in respondents' motion to stay, respondents have been unable to identify four of the petitioners as

detainees at Guantanamo Bay. Respondents, therefore, would be unable to comply with any order pertaining to those petitioners, including the conditions demanded by counsel.¹

ARGUMENT

I. Factual Returns Should Not Be Required

While petitioners concede that a stay is appropriate in this case, see Pet'rs' Partial Consent to Resp'ts' Mot. to Stay at 1, they still insist factual returns, which typically consist of the record of proceedings before the Combatant Status Review Tribunal that confirmed a petitioner's status as an enemy combatant properly subject to detention, should be filed in the instant case.² See Pet'rs' Partial Consent to Resp'ts' Mot. at 2. Petitioners' dismissive treatment of the needless expenditure of judicial and litigation resources that would result from submission of factual returns, ignores the cascade effect that would follow from not staying this case. Presently, there are more than 170 habeas cases pending on behalf of well over 250 detainees at Guantanamo Bay; the majority of those cases and petitioners were not subject to the decisions of Judge Leon in Khalid v. Bush, 355 F. Supp. 2d 311 (D.D.C. 2005), appeals docketed, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and Judge Green In re Guantanamo Detainee Cases, 355 F. Supp. 2d 443 (D.D.C. 2005), appeal on petition for interlocutory appeal, No. 05-5064 (D.C. Cir. Mar. 10, 2005). A decision to allow submission of factual returns to go forward pending the

¹ Respondents have not yet moved to dismiss the cases involving the unidentified petitioners outright in order to give opposing counsel the opportunity to provide additional information that would permit identification of all petitioners as detainees. In the interim, a stay is appropriate, and the requested stay conditions should be rejected, both because some petitioners remain unidentified and for the reasons explained in this memorandum.

² The two identified petitioners in this case have been determined to be enemy combatants.

resolution of the appeals could precipitate a chain reaction — the scores of petitioners in other pending and future Guantanamo Bay detainee habeas cases, seeking parity of treatment, would request the Court to allow access to factual returns in those cases, perhaps even by lifting or modifying stays that have already been entered. This scenario is exactly what Judge Green aimed to avoid when she denied petitioners’ motion to reconsider her order granting a stay pending appeal “in light of the substantial resources that would be expended and the significant burdens that would be incurred should this litigation go forward.” See Order Den. Mot. for Recons. of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases (Feb. 7, 2005) (Green, J.). Indeed, the decision to allow the filing of factual returns would likely need to be revisited or relitigated, and may be shown to have been altogether unnecessary, once the Court of Appeals, likely very soon, provides guidance regarding the handling of the habeas claims of Guantanamo Bay detainees such as petitioners. Thus, in the interest of efficiency of judicial and litigation resources, as well as to minimize administrative burdens, this Court should hold proceedings in the above-captioned case, including the filing of factual returns, in abeyance pending the outcome of the appeals of the decisions by Judges of this Court in the other Guantanamo Bay detainee cases.

In the event the Court orders the submission of factual returns, however, it could only be done for petitioners who are actually identified as Guantanamo detainees and, once identified, only pursuant to a coordinated and reasonable schedule, taking account of the fact that petitioners in all the recently filed cases are seeking factual returns and given the logistical burdens posed by an undertaking to produce returns in those cases. Each factual return must be obtained from the Department of Defense (“DoD”), and then reviewed by agencies who

provided source information to DoD to ensure that information disclosed to counsel in the returns is in accordance with all applicable statutes, regulations and Executive Orders.

Respondents must then prepare both public and classified versions of the factual returns for submission to the Court and counsel. Further, submission of these returns will increase the risks of inadvertent or other disclosure or compromise of classified information. Given that the D.C. Circuit will be considering the proper scope of these proceedings, including whether the claims of petitioners can be dismissed without reference to a specific factual return for each petitioner, there is no justification to incur substantial burdens on government resources and increase the risk to national security by providing petitioners' counsel access to factual returns which may ultimately prove unnecessary.³

For these reasons, the Court should not order the production of factual returns for petitioners in this case, and in no event should the Court require returns to be produced sooner than 120 days from the date of any such order.⁴

³ Though the submission of factual returns should not go forward at all, a schedule for any such undertaking should be no more restrictive than is necessary. In this case, a schedule allowing for the production of factual returns within 120 days would be appropriate and ordering a shorter period would be burdensome. See, e.g., Order (dkt. no. 12), Battayav v. Bush, No. 05-CV-714 (RBW) (D.D.C. May 19, 2005) (requiring 120-day schedule); Order (dkt. no. 21), Al-Anazi v. Bush, No. 05-CV-345 (JDB) (D.D.C. Apr. 21, 2005) (imposing 120-day schedule to provide factual return).

⁴ Counsel demands that the Court order respondents to provide to counsel the Internment Serial Number (ISN) of the two petitioners identified as Guantanamo detainees held as enemy combatants. See Pet'rs' Partial Consent to Resp'ts' Mot. at 2-3. Petitioners make no factual or legal showing justifying the court-ordered disclosure of such information and, in any event, such information is typically provided in connection with a request by counsel for a visit with a properly represented petitioner.

II. A Stay Should Not Be Conditioned On The Issuance of Preservation Order.

Petitioners also seek to condition a stay in this case on the issuance of a preservation order. Pet'rs' Partial Consent to Resp'ts' Mot. at 3. Petitioners' request that any stay order imposed be accompanied by a preservation order is effectively a request for injunctive relief. See Order (dkt. no. 12), Battayav, supra n.3, at 4. In seeking such relief as a condition of a stay, petitioners attempt to sidestep their burden of demonstrating that they are entitled to preliminary injunctive relief. Petitioners' attempt, however, must fail because their request is injunctive in nature, and preliminary injunctive relief "is an extraordinary and drastic remedy" that should not be available "unless the movant, *by a clear showing*, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (emphasis in original). Preliminary injunctive relief is not warranted unless the movant can clearly demonstrate that (1) the movant will suffer irreparable injury in the absence of an injunction; (2) the movant has a substantial likelihood of success on the merits with respect to the requested relief; (3) the injunction would not substantially injure other interested parties; and (4) the injunction would further the public interest. See Al-Fayed v. CIA, 254 F.3d 300, 303 (D.C. Cir. 2001).

Petitioners cannot circumvent these requirements merely by seeking the same measures of relief in the form of conditions on a requested stay. For example, in Al-Anazi v. Bush, 370 F. Supp. 2d 188, 199 n.11 (D.D.C. 2005) (Bates, J.), the Court rejected petitioners' request for advance notice of transfer and explained that "if petitioners cannot meet the prerequisites of a motion for preliminary injunction (as the Court concludes), it is unlikely they should receive that same relief through the backdoor of a stay." See also O.K. v. Bush, 377 F. Supp. 2d 102 (D.D.C. 2005) (Bates, J.); Almurbati v. Bush, 366 F. Supp. 2d 72 (D.D.C. 2005) (Walton, J.). As

explained below, petitioners have not adequately demonstrated that their demand for a preservation order is justified.

Petitioners simply request the preservation of documents, but they fail to make any factual or legal showing that the equitable relief they seek is warranted. Moreover, petitioners fail to acknowledge that this Court rejected a similar request for a preservation order in a related Guantanamo detainee case. See Order (dkt. no. 12), Battayav, supra n.3, at 4.

CONCLUSION

For the reasons stated in respondents' motion to stay proceedings pending related appeals, and in this supporting reply memorandum, this Court should stay further proceedings in the instant case pending the appeals of Judge Leon's decision in Khalid and Judge Green's decision in In re Guantanamo Detainee Cases and any deny petitioners' requested conditions on such a stay.

Dated: December 9, 2005

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

**MOTION FOR TRANSFER OF HABEAS CORPUS ACTION OF
PETITIONER ALI HAMZA AHMED SULIMAN BAHLOOL TO CALENDAR
COMMITTEE FOR REASSIGNMENT AS A RELATED CASE**

On October 27, 2005 the undersigned counsel filed a Petition for Writs of Habeas Corpus on behalf of six Yemeni detainees at Guantánamo Bay Naval Station. This case was initially assigned to the Hon. Colleen Kollar-Kotelly but subsequently was reassigned to this Court on November 1, 2005. Only after filing the Petition, counsel learned that one of the Petitioners, Ali Hamza Ahmed Suliman Bahlool, has been identified by the United States Department of Defense as Ali Hamza Ahmed Sulayman Al Bahlul, (hereafter, “Mr. Bahlool”), who has been charged and scheduled for trial before a Military Commission, pursuant to the Military Order of November 12, 2001. (*See* Military Commission Charge Sheet, attached hereto as Exhibit A.) In light of those charges, we are filing today a Supplemental Petition of Ali Hamza Ahmed Suliman Al Bahlool for Writ of Habeas Corpus And Complaint for Injunctive, Declaratory, and Other Relief, to assert allegations and claims that specifically relate to his ongoing proceedings before the Military Commission.

Mr. Bahloul's Supplemental Petition raises legal and factual issues not presented by his co-petitioners or the petitions on behalf of other Guantánamo detainees, including, *inter alia*, the legality of the Military Commission process and its intersection with habeas corpus. As the Court may be aware, habeas petitions have been filed on behalf of other Guantánamo detainees charged before the Military Commission, including, most notably, *Hamdan v. Rumsfeld*, No. 04-CV-1519 (JR), which is assigned to Hon. James Robertson of this District. Judge Robertson has previously dealt at length with the factual and legal issues raised by the Military Commission process and issued an Order dated November 8, 2004, which is now before the United States Supreme Court on a petition for certiorari. *Hamdan v. Rumsfeld*, 344 F. Supp.2d 152 (D.D.C. 2004); 415 F.3d 33 (D.C. Cir. 2005); *cert. granted*, 126 S.Ct. 622 (U.S. Nov. 7, 2005) (No. 05-184).

Now that his Supplemental Petition has been filed, Mr. Bahloul's case presents many of the same factual and legal issues as in *Hamdan* — which are distinct from other Guantánamo *habeas* cases — so this action is related to *Hamdan* within the meaning of Local Civil Rule 40.5(a)(3). Among other common legal and factual issues, both cases raise the extent to which the Military Commission process established for certain Guantánamo detainees comports with the requirements of the Geneva Conventions and the due process clause of the Fifth Amendment to the United States Constitution. However, because counsel did not discover this overlap until after filing the original Petition on behalf of Mr. Bahloul and five other detainees, his case was not designated as related to *Hamdan* at that time.¹ Nonetheless, pursuant to Local Civil Rule

¹ Rather, in order to identify this as a Guantánamo habeas case, we designated it pursuant to Local Civil Rule 40.5 as related to another recently-filed Guantánamo habeas action assigned to Judge Kollar-Kotelly. As noted above, the case thereafter was reassigned to this Court.

40.5(c)(2), when a later-filed case is discovered to be related to an earlier-filed case only after assignment to a Judge of this District, the Judge to whom the later-filed case is assigned may transfer the case to the District's Calendar Committee for reassignment to the Judge before whom the earlier-filed related case is pending. This is precisely the scenario presented here.

Moreover, there is good reason for the Court to transfer Mr. Bahloul's case to the Calendar Committee for reassignment to Judge Robertson. At this point, only a small percentage of Guantánamo detainees have been designated for trial before a Military Commission. To date, Judge Robertson is the only Judge of this District who has addressed in any detail the substantive factual and legal issues presented by the Military Commission process in Guantánamo, in *Hamdan*. Now that Mr. Bahloul has raised substantially identical legal and factual issues in his Supplemental Petition, transferring his case for reassignment to Judge Robertson best serves the interests of judicial economy and consistency of decision.

Finally, because Mr. Bahloul has now challenged his detention and expected trial before a Military Commission in a separate Supplemental Petition, his claims can be readily severed from his co-petitioners for transfer and reassignment. Nonetheless, if the Court prefers, we can file an amended petition on behalf of the remaining five Petitioners that omits any reference to Mr. Bahloul, or sever the cases in any other manner the Court directs.


CONCLUSION

For the reasons discussed above, we respectfully request that the Court transfer Mr. Bahloul's Supplemental Petition to the Calendar Committee for reassignment to Judge Robertson, as a related case to *Hamdan*.²

Dated: December 13, 2005
New York, New York

Respectfully submitted,

Counsel for Petitioners/Plaintiffs:



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Barbara J. Olshansky (NY0057)
Director Counsel
Tina Monshipour Foster (TF5556)
Gitanjali S. Gutierrez (GG1234)
CENTER FOR CONSTITUTIONAL RIGHTS

² Pursuant to Local Civil Rule 40.5(b)(3), we are notifying Judge Robertson of this request for reassignment by copy of this motion.

666 Broadway, 7th Floor
New York, New York 10012
Tel: (212) 614-6439
Fax: (212) 614-6499

* Not admitted in the District of Columbia District but qualified to practice as *pro bono* counsel pursuant to L.Cv.R. 83.2(9).

DECLARATION OF SERVICE

Michelle Kass hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

I am a paralegal at Hunton & Williams LLP, attorneys for Petitioners Issam Hamid Ali Bin Ali Al Jayfi and Ali Hamza Ahmed Suliman Al Bahloul.

That on December 14, 2005, I served a true copy of the Motion for Transfer of Habeas Corpus Action of Petitioner Ali Hamza Ahmed Suliman Bahloul to Calendar Committee for Reassignment as a Related Case on all parties via the Court's ECF System, and on all parties who did not receive these court filings via the Court's ECF system, by depositing same in a duly enclosed and sealed wrapper, with the correct postage thereon, in an official letter box duly maintained by the Government of the United States of America within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed December 14, 2005.



Michelle Kass

EXHIBIT A

TO

BAHLOOL MOTION TO

TRANSFER

UNITED STATES OF AMERICA

v.

ALI HAMZA AHMAD SULAYMAN AL BAHLUL

a/k/a Ali Hamza Ahmed Suleiman al Bahlul

a/k/a Abu Anas al Makki

a/k/a Abu Anas al Yemeni

a/k/a Mohammad Anas Abdullah Khalidi

)
)
)
) **CHARGE:**

) **CONSPIRACY**
)
)
)
)

Ali Hamza Ahmad Sulayman al Bahlul (a/k/a Ali Hamza Ahmed Suleiman al Bahlul, a/k/a Abu Anas al Makki, a/k/a Abu Anas al Yemeni, a/k/a Mohammad Anas Abdullah Khalidi) is a person subject to trial by Military Commission. At all times material to the charge:

JURISDICTION

1. Jurisdiction for this Military Commission is based on the President's determination of July 3, 2003 that Ali Hamza Ahmad Sulayman al Bahlul (a/k/a Ali Hamza Ahmed Suleiman al Bahlul, a/k/a Abu Anas al Makki, a/k/a Abu Anas al Yemeni a/k/a Mohammad Anas Abdullah Khalidi, hereinafter "al Bahlul") is subject to his Military Order of November 13, 2001.
2. Al Bahlul's charged conduct is triable by a military commission.

GENERAL ALLEGATIONS

3. Al Qaida ("the Base"), was founded by Usama bin Laden and others in or about 1989 for the purpose of opposing certain governments and officials with force and violence.
4. Usama bin Laden is recognized as the *emir* (prince or leader) of al Qaida.
5. A purpose or goal of al Qaida, as stated by Usama bin Laden and other al Qaida leaders, is to support violent attacks against property and nationals (both military and civilian) of the United States and other countries for the purpose of, *inter alia*, forcing the United States to withdraw its forces from the Arabian Peninsula and in retaliation for U.S. support of Israel.

6. Al Qaida operations and activities are directed by a *shura* (consultation) council composed of committees, including: political committee; military committee; security committee; finance committee; media committee; and religious/legal committee.
7. Between 1989 and 2001, al Qaida established training camps, guest houses, and business operations in Afghanistan, Pakistan, and other countries for the purpose of supporting violent attacks against property and nationals (both military and civilian) of the United States and other countries.
8. In August 1996, Usama bin Laden issued a public "*Declaration of Jihad Against the Americans*," in which he called for the murder of U.S. military personnel serving on the Arabian Peninsula.
9. In February of 1998, Usama bin Laden, Ayman al Zawahari and others under the banner of the "International Islamic Front for Jihad on the Jews and Crusaders," issued a *fatwa* (purported religious ruling) requiring all Muslims able to do so to kill Americans – whether civilian or military – anywhere they can be found and to "plunder their money."
10. On or about May 29, 1998, Usama bin Laden issued a statement entitled "The Nuclear Bomb of Islam," under the banner of the "International Islamic Front for Fighting Jews and Crusaders," in which he stated that "it is the duty of the Muslims to prepare as much force as possible to terrorize enemies of God."
11. Since 1989, members and associates of al Qaida, known and unknown, have carried out numerous terrorist attacks, including, but not limited to: the attacks against the American Embassies in Kenya and Tanzania in August 1998; the attack against the USS COLE in October 2000; and the attacks on the United States on September 11, 2001.

CHARGE: CONSPIRACY

12. Ali Hamza Ahmad Sulayman Al Bahlul (a/k/a Ali Hamza Ahmed Suleiman al Bahlul, a/k/a Abu Anas al Makki, a/k/a Abu Anas al Yemeni, a/k/a Mohammad Anas Abdullah Khalidi, hereinafter "al Bahlul"), in Afghanistan, Pakistan, Yemen and other countries, from on or about February 1999 to on or about December 2001, willfully and knowingly joined an enterprise of persons who shared a common criminal purpose and conspired and agreed with Usama bin Laden, Saif al Adel, Dr. Ayman al Zawahari (a/k/a "the Doctor"), Muhammad Atef (a/k/a Abu Hafs al Masri), Salem Ahmed Salem Hamdan (a/k/a Saqr al Jadawi) and other members and associates of the al Qaida organization, known and unknown, to commit the following offenses triable by military commission: attacking civilians; attacking civilian

objects; murder by an unprivileged belligerent; destruction of property by an unprivileged belligerent; and terrorism.

13. In furtherance of this enterprise and conspiracy, al Bahlul and other members or associates of al Qaida committed the following overt acts:
 - a. In 1999, with knowledge of Usama bin Laden's 1996 "*Declaration of Jihad Against the Americans*" and the 1998 fatwa endorsed by bin Laden calling for the "killing of Americans and their allies, both military and civilian," al Bahlul voluntarily traveled from Yemen to Afghanistan (via Pakistan) with the intent and purpose of joining and supporting Usama bin Laden in his expressed cause.
 - b. In 1999, upon arriving in Afghanistan, al Bahlul met Saif al Adel, the head of the al Qaida Security Committee.
 - c. Based upon arrangements made by Saif al Adel, al Bahlul participated in military training for two months at the al Qaida-sponsored Aynak camp in Afghanistan.
 - d. After completing his training at Aynak camp, al Bahlul met with and pledged *bayat* to Usama bin Laden. By pledging *bayat*, al Bahlul affirmed his willingness to perform any act requested by bin Laden and to protect bin Laden from all harm.
 - e. In late 1999, after completing his training at Aynak camp, al Bahlul lived at an al Qaida-sponsored guesthouse in Qandahar and performed duties in support of al Qaida.
 - f. From late 1999 through December 2001, al Bahlul was personally assigned by Usama bin Laden to work in the al Qaida media office. In this capacity, al Bahlul created several instructional and motivational recruiting video tapes on behalf of al Qaida.
 - g. Usama bin Laden personally tasked al Bahlul to create a video glorifying, among other things, the attack on the USS COLE. Al Bahlul created this "USS COLE" video to recruit, motivate and "awaken the Islamic Umma to revolt against America" and inspire al Qaida members and others to continue violent attacks against property and nationals (both military and civilian) of the United States and other countries.
 - h. After being placed on alert by Usama bin Laden in the weeks just before the attacks of September 11, 2001, al Bahlul assisted Usama bin Laden and other al Qaida members in mobilizing and moving from Qandahar.

- i. On September 11, 2001, Usama bin Laden tasked al Bahlul to set up a satellite connection so that bin Laden and other al Qaida members could see news reports. Despite his efforts, al Bahlul was unable to obtain a satellite connection because of mountainous terrain.
- j. In the weeks immediately following the attacks of September 11, 2001, Usama bin Laden tasked al Bahlul to obtain media reports concerning the September 11th attacks and to gather data concerning the economic damage caused by these attacks.
- k. In 2001, al Bahlul served as a bodyguard and provided protection for Usama bin Laden. While traveling with Usama bin Laden, al Bahlul was armed and wore an explosives-laden belt so that he could provide Usama bin Laden with physical security and protection.

EXHIBIT 7

TO

SUPPLEMENTAL

PETITION OF BAHLOOL



DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS

July 16, 2004

MEMORANDUM FOR THE SECRETARY OF THE NAVY

FROM: LCDR Philip Sundel, Major Mark Bridges

SUBJECT: Combatant Status Review Tribunal of Ali Hamza Ahmad Sulayman al Bahlul

1. Pursuant to your memorandum dated 7 July 2004, we hereby request to serve as Mr. Ali Hamza Ahmad Sulayman al Bahlul's personal representative before the Combatant Status Review Tribunal. On 3 February 2004, we were detailed by the Chief Defense Counsel, Office of Military Commissions, to represent Mr. al Bahlul for all matters relating to military commission proceedings. On 23 February 2004, our client was formally charged with one count of conspiracy and the charge was approved and referred by the Appointing Authority to a military commission on 28 June 2004.

2. We are in receipt of a 7 July 2004, memorandum from the Deputy Secretary of Defense, which establishes Combatant Status Review Tribunals for all detainees being held at Guantanamo Bay Naval Base, Cuba. Based on our reading of a Defense Department Background Briefing, we understand that all of the detainees, including those who have been charged, will be allowed to participate in a review tribunal. The stated purpose for this review tribunal is to provide detainees the opportunity to contest designation as an "enemy combatant", an issue which is inextricably tied to the question concerning our client's status and whether he is properly subject to trial before a military commission.

3. Paragraph c of the memorandum also provides that each detainee will be provided a personal representative to assist him in the review tribunal process. As military officers we are qualified to act as Mr. al Bahlul's personal representative, and as his detailed counsel we are already familiar with the matter and have established an attorney client relationship with him. Therefore, it is necessary and appropriate that we alone be appointed to serve as his personal representative before the combatant status review tribunal.

4. The memorandum from the Deputy Secretary of Defense is silent as to whether any other personal representative would enjoy a confidential relationship with Mr. al Bahlul and would, therefore, be required to divulge any information provided by him to government representatives. Such an unprivileged relationship would inappropriately interfere with potential proceedings before a military commission.

5. Additionally, as the detailed military counsel of record for Mr. al Bahlul, we request the following:


a. No conversations between Mr. al Bahlul and any other personal representative or government agent take place without our being present.


b. As we already have the appropriate security clearance, we request that any and all information in the possession of the Department of Defense that was already used or may be used in the determination of Mr. al Bahlul's designation as an enemy combatant, including any records, determinations, or reports generated in connection with earlier determinations or reviews, be provided to us as soon as possible so that we are able to properly prepare for the Combatant Status Review Tribunal.

c. In addition to notice of the unclassified factual basis for Mr. al Bahlul's designation as an enemy combatant as provided in paragraph g (1) of the memorandum, we request copies of any classified versions.

d. Notification of any prospective date set for Mr. al Bahlul's review tribunal, to include the identities and ranks of the Convening Authority, tribunal members, recorder, and translator.


6. We would appreciate your expeditious consideration of this matter. Should you have any questions or concerns, we can be reached at (703) 607-1521, extensions 192 or 186.


PHILIP SUNDEL
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CERTIFICATE OF SERVICE

I hereby certify that the original of this request was hand-delivered to the Office of the Secretary of the Navy on 16 July 2004.


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EXHIBIT 2

TO

SUPPLEMENTAL

PETITION OF BAHLOOL

Composite statement: Detention in Afghanistan and Guantanamo Bay

Shafiq Rasul, Asif Iqbal and Rhuheel Ahmed

1. All three men come from Tipton in West Midlands, a poor area with a small community of Pakistani and Bangladeshi origin. The school all three attended is considered one of the worst in England. Rhuheel Ahmed and Asif Iqbal who are now both aged 22 were friends from school, although one year apart. Neither was brought up religiously but each was drawn towards Islam. Shafiq Rasul is now aged 27 and had a job working at the electronics store, Currys. He was also enrolled at the University of Central England.
2. This statement jointly made by them constitutes an attempt to set out details of their treatment at the hands of UK and US military personnel and civilian authorities during the time of their detention in Kandahar in Afghanistan in late December 2001 and throughout their time in American custody in Guantanamo Bay Cuba. This statement is a composite of the experiences of all 3. They are referred to throughout by their first names for brevity. There is far more that could be said by each, but that task is an open-ended one. They have tried to include the main features.

Detention in Afghanistan

3. All three men were detained in Northern Afghanistan on 28 November 2001 by forces loyal to General Dostum. They were loaded onto containers and transported to Sherbegan prison. The horrors of that transportation are well documented elsewhere and are not described in detail here.
4. According to information all three were given later, there were US forces present at the point they were packed into the containers together with almost 200 others. Asif became unconscious and awoke to find that in an attempt to allow air into the containers Dostum's forces had fired machine guns into the sides of the containers. Asif was struck in the arm by a bullet as a result. The journey to Sherbegan took nearly 18 hours and the containers were not opened until they reached the prison. All three men remained in the containers amongst the dead and dying throughout this time. Asif reports that to get water he had to lick the side of the container or wipe a cloth on the top of the container where the condensation had collected and squeeze the drips of water into his mouth. On arrival at Sherbegan of the 200 originally in the container only 20 were alive, some of them seriously injured.

Sherbegan Prison

5. This prison is an old fortress, a court yard surrounded by buildings open to the air. The 3 men were held in a room approximately 10m by 10m in which 70 men were held. After several days they were moved to another much smaller room with about 30 others.
6. Conditions in Sherbegan were appalling, Asif says; **'in the first week the only food we got was a tiny portion of bread per day and a very small amount of water. This was to last us the whole day'**. When the Red Cross arrived, after about a week, some more food was provided and also blankets. Shafiq was given plastic sandals at this point but Rhuhel and Asif were barefoot (their boots having been stolen by Dostum's forces). Asif had a 'Kameez' or traditional Pakistani top and jogging bottoms. Shafiq and Rhuhel each had a thin Kameez and Pakistani trousers known as 'shalwar'. These were thin summer clothes and provided no protection against the freezing weather, it being now December.
7. After one Red Cross visit a lorry load of grain was left to feed them which was however stolen by Dostum's forces. The prisoners had, in consequence less food than they had previously. It was at this point that conditions sharply deteriorated. Shafiq says that, **'we all had body and hair lice. They were big and would bite. I still have the scars from their bites on my body. We all got dysentery and the toilets were disgusting. It was just a hole in the ground with shit everywhere. The whole prison stank of shit and unwashed bodies'**. After the food rations were reduced the prisoners started fighting over food. Rhuhel says **'I was asleep and got up to pray. There was also food being distributed. I got my piece and there was a piece missing and someone accused me of having a piece extra and he attacked me'**.
8. Whilst in Sherbegan Asif's arm which had been injured in the container became infected but he was given no medical treatment other than some iodine and gauze.

9. They were held in Sherbegan for approximately 30 days during which the Red Cross saw them. They gave their names and asked for families in England to be contacted. Asif says '***the Red Cross told us that they had contacted the British Embassy in Islamabad, Pakistan and that the Embassy officials would be coming to see us on Friday. In fact on that day (28th December 2001) it was US Special Forces who arrived at the prison***'.
10. After their identities were revealed to the US forces, they were woken up one morning by the guards in Sherbegan and together with other "foreigners" they were herded towards the main gates. The weather was freezing. Shafiq says '***I had a pair of flimsy shoes supplied by the Red Cross but no socks. At this time I was extremely weak. I was suffering from dysentery and my clothes were extremely thin and provided very little protection from the weather. We were all covered in hair and body lice and I had not washed for at least 6 weeks and I was filthy***'.
11. As they stood at the main gate, US Special Forces personnel surrounded them pointing their guns. One by one they were stripped of all their clothes despite the freezing temperature. They stood there naked, being held by two of the Special Forces soldiers whilst their pictures were taken. They were searched and after about five minutes, they were allowed to put their clothes back on but were already suffering from the effects of the cold.
12. Shafiq says '***I was very weak. I had not eaten for at least two days and only a little water in the morning***'. All three believed that "***the British officials***" would ***arrange for us to be taken out of the prison and possibly sent back to the UK even if that meant being interrogated by British officials***'.

First interrogation by U.S Army

13. After the search the men were taken into a room within the grounds of the prison.

This location is best described as a shed and it offered very little protection from the cold. Shafiq describes the interrogations as follows, ***'My hands and feet were tied with plastic cuffs. The room was about 5 foot by 5 foot and as I was dragged in, soldiers forced me onto my knees in front of an American soldier in uniform. There were no tables or chairs in the room. The soldier did not identify himself to me but straight away started asking questions. Whilst I was in this position, one of the soldiers who had come in with me stood in the corner of the room with a machine gun pointed at me. He said if you move that guy over there (with the gun) will shoot you. The American interrogator asked my name, where I was from and what I was doing in the prison. I was so weak that I was barely able to walk and had difficulty concentrating on the questions, but I answered as well as I could in the circumstances. The interview lasted about 10 minutes and was conducted in English. I think there were interpreters for some of the other foreign detainees. At the end of the interview I was asked how I was feeling, and I told the interrogator that I was scared. He said that this was nothing compared with what they could do to me'***.

14. Asif says of this first interrogation ***'the soldier did not identify himself to me but straight away started asking questions. Whilst I was in this position there was a soldier in the room standing right next to me holding a black 9mm automatic pistol to my temple. The barrel of the pistol was actually touching my temple'***.

15. After the interrogation they were all placed outside the shed side by side. As soon as they walked out of the shed, an American soldier put a sandbag on their head and then wrapped thick masking tape around their head, to further cover their eyes. Asif says that ***'despite this, it was just about possible to see underneath the masking tape and through the sand bag that was being used as a hood if you angled your head correctly. It was obviously impossible to properly***

distinguish between people and identify features, but I could roughly

distinguish figures'. After the hood was placed on their head they were sat outside in the main yard against the wall. They were all sitting side by side in the freezing cold. They estimate that there were approximately 30 to 50 prisoners, all of whom were non Afghani.

16. The Special Forces were standing in a semi circle in front of them. They had to wait until all of the detainees were interrogated and for the Americans to bring transport to the prison. This meant that they were sitting with no shoes or socks, in flimsy clothes and legs and arms tied with tight plastic cuffs for at least three to four hours.

17. Rhuhel says ***'I think we were all suffering from the cold, dehydration, hunger, the uncertainty as well as the pain caused by the plastic ties. Added to this, periodically Special Forces soldiers would walk along a line of sitting detainees and kick us or beat us at will'***. Asif adds that ***'they would abuse us in English, constantly swearing and threatening us. I recall that one of them said "you killed my family in the towers and now it's time to get you back". They kept calling us mother fuckers and I think over the three or four hours that I was sitting there, I must have been punched, kicked, slapped or struck with a rifle butt at least 30 or 40 times. It came to a point that I was simply too numb from the cold and from exhaustion to respond to the pain'***.

18. Eventually large trucks were brought up to the prison. Still hooded they could not see the trucks but could distinguish the distinctive sound they make. They were picked up one by one and thrown in. It was impossible to walk because of the plastic ties around their legs so they were dragged everywhere. As they did not have any shoes or socks, this meant that the ground would scrape the skin off their feet. When they were thrown into the lorry, there was somebody else in there that grabbed them who dragged them in. They were not allowed to talk or communicate in any way.

19. They were driven for about 45 minutes until they arrived at what they now know was an airport. Whilst in the truck, they could distinguish flashes of light which they

recognized to be from a camera/flash. Shafiq says '***I believe they were constantly taking photographs of us. I can't imagine these photographs were for identification purposes because of the hoods we were wearing, or to provide evidence that they were not maltreating us, because the abuse we were suffering was serious. I think, in light of what I now know that these photographs were trophies***'.

20. When they got to their destination, they could hear the soldiers talking about "birds" arriving at 18.00 hours. They had to wait in the truck at the airport for some time. Shafiq says '***Asif and I were taken on the first plane. We did not know where we were being taken. I was not allowed to use the toilet, or given any food, extra clothes or water. Throughout this time we still had the hoods on which made the experience even more terrifying. The plane itself was I believe a large cargo plane. It had hooks on the floor and they sat us down attaching each of us to some form of metal belt. The belt was then attached to a chain on either side and also padlocked to the floor. Because our hands were tied behind us and our legs were still tied in plastic cuffs, we had to keep our legs straight out in front of us. In normal circumstances this position would have been difficult to maintain for any length of time. Given that I was extremely weak and that I was suffering from dysentery, dehydration, hunger and exhaustion it was impossible to maintain this position for more than a few minutes at a time. If however I leant back or tried to move, I would be struck with a rifle butt. These blows were not designed to prevent us from falling back or to adjust our position, they were meant to hurt and punish us***'.

21. All three men explain the aircraft was freezing. Whilst the three men were not suffering from any major injuries (other than Asif's infected arm), there were others on the plane, including amputees and the victims of bombing raids, who were extremely unwell and yet had to maintain this position with the constant threat of being struck by rifle butts or kicked and beaten by the soldiers. Rhuheel says '***I took the last plane. The conditions in my plane were same as those described by Shafiq***'.

Arrival in Kandahar

22. The plane eventually landed in Kandahar and as they were being taken off, each detainee was taken to the side of the plane and in front of the engines. Shafiq says ***'The cargo plane had no heating and given the flimsy clothes we were wearing I believe I was close to hypothermia. My feet were still tied with the plastic cuffs, and therefore once again we were dragged out of the plane and in front of the engines. I believe the reason we were placed in front of the engines was to try and heat us up'.***

23. After this a rope was tied around their right arm and even though they were wearing a hood they understood that this rope was then connected to the man behind and the man in front. The rope was extremely thin and bit deep into their arm.

24. After the ropes were placed on their arms, they had to walk for nearly an hour. They believe they were actually walking around in circles rather than heading straight for their destination. Their feet were bound with plastic ties and so they could only shuffle. If the man in front or behind went too fast or too slow the rope would become taut and dig into their arm. This together with the pain of shuffling, in bare feet (and in the freezing cold) on the gravel, made this walk unbearable.

25. The hood and blindfold were still in place when they arrived at their destination, and all of them had deep cuts on their feet and rope burns on their right arm.

26. Asif says ***'We were eventually herded into a tent and the rope was removed. I knew it was a tent because I couldn't feel the wind. We were made to kneel with our legs underneath us and our foreheads resting on the ground. Our hands were tied behind us as were our feet'.*** Shafiq adds that ***'in normal circumstances, it might have been possible to keep my head one or two centimeters above the ground so that the sand and stones on the ground didn't dig into my head. By this time however I was so weak that I simply sunk forward and my head landed on the ground quite heavily. As I was in***

this position the sand and stone was cutting into my forehead and so occasionally I tried to lift my head to get some relief. Each time I would do this I was hit or assaulted in some way. My head was forced down on one occasion with a rifle butt. The soldier didn't stop when my head hit the ground but continued pushing down. On another occasion someone came up and pulled the plastic ties around my ankle which caused my legs which were folded under me to straighten, this meant my face and chest hit the ground heavily'.

27. They found out later that at this time the Americans were processing them and they were eventually given plastic wrist bands with numbers on them. Shafiq says *'I was number 78. As I was lying on the ground, two soldiers came up and carried me outside. They then laid me on the floor and started searching me. I still had my clothes on at this point. One of them kicked me a few times, as a result of which I suffered a lot of bruising. Whilst I was being searched, one of the soldiers would kneel on my back and the other carried out the search. After my search, I was taken to another tent. I still had the hood on and as I was taken to this tent, they were asking me "where are you from" and also they kept asking me what I was "doing in Afghanistan". In the tent, they cut off my clothes and they then carried out a "forced cavity search", but this took place with the hood still on my head and I was terrified and humiliated'.*

28. After this tent, Shafiq was taken by the soldiers who were carrying a blanket and clothes (though he had to walk naked) through a maze made out of barbed wire. Even the doors in the maze were made of barbed wire. If he tripped or slipped, which was likely given how exhausted he was, the wire would cut him. This barbed wire maze was in the open air.

29. Asif and Rhuhel describe the same treatment and all three eventually found themselves in a large hanger where they stayed over-night. In relation to the processing carried out by the American personnel Asif adds that he saw a doctor in the tent, *'I showed him my arm and he said that it was infected. He put some*

sort of a plastic bandage on it. I also told him about my feet which were badly cut up. He looked at them and then said "you'll live".

30. They had still not been given food or water. Shafiq says '*I was totally dehydrated, exhausted and suffering from the effects of malnutrition, dysentery and the beatings. Despite this I was called for interrogation by somebody shouting out my number. I had a sack placed on my head and for the first time, I was placed in shackles. These were not the "three piece suits" (see below) used in Guantanamo, but leg irons and handcuffs. I was taken into the interview room bent double with the sack on my head. I had received a change of clothes at this stage and was wearing a thin shalwar kameez which is a type of clothing commonly worn in Pakistan*'. Asif and Rihel describe the same treatment.

Interrogation at Kandahar

31. When they got into the interrogation tent, the hood was taken off and they were told to sit on the floor. There was a table in the middle of the tent with two men behind it. There was also a soldier with a gun standing behind them. All three were told forcefully that if they moved they would be shot. Shafiq says '***I was questioned for about half an hour. I could see four water bottles sitting on the table and I said I needed water. One of the interrogators told me that he did not have any despite the fact that I could see the bottles sitting in front of him. He told me that if I cooperated I would get some water later***'.

32. They all answered the questions put to them truthfully. The bulk of each interview was about their backgrounds including address, telephone number etc. After this they were photographed and had their fingerprints and DNA taken. The DNA included a swab from their mouth as well as hairs plucked from their beard.

33. After the first interrogation by the Americans, they were taken to an open tent (with the sides open to the elements) and given a blue jump suit. They were also given a couple of crackers each and some peanut butter and at this point the Americans started to insist that they drink a lot of water.

34. The first interrogations were done in English by the Americans. None of the interrogators identified themselves to the detainees.

35. Asif explains that his second interview was also with an American but on this occasion he was badly beaten by his interrogator and the guard. He states that, '***My second interview took place a couple of days later. I was taken away from the others, with my hood on and walked (bent double) by some soldiers to a tent. An American came into the tent and shouted at me telling me I was Al-Qaeda. I said I was not involved in Al-Qaeda and did not support them. At this, he started to punch me violently and then when he knocked me to the floor started to kick me around my back and in my stomach. My face was swollen***

and cut as a result of this attack. The kicks to my back aggravated the injuries I had received from the soldier striking me with a rifle butt. After a few moments the guards dragged me back to the tent. Whilst he was attacking me, the interrogator didn't ask me any other questions but just kept swearing at me and hitting me'.

36. After about one week when they had been interrogated several times by American military personnel they were each separately brought in to be questioned by a British soldier.

Interrogation by British Army

37. Their first contact with British military personnel was whilst held in the US prison camp in Kandahar. The interrogator was wearing a maroon beret. He told them that he was from the SAS. Throughout this interrogation as well as the earlier ones, the hood was removed.
38. Shafiq describes being brought into a tent by two US soldiers first thing in the morning. He had very thin clothes on and was freezing. He had a sandbag placed over his head which was removed once inside the tent. He was handcuffed from behind and had leg irons on. One of the US soldiers had his arm round his neck and was saying "wait until you get back to the tent you will see what we are going to do to you". The British officer produced two letters. He said one was from Scotland Yard and the other from Interpol.
39. There were a number of names on a list. Shafiq was able to see the letters, only briefly before they were pulled away. He says that the letter claimed that 16 hours after he had left home for Pakistan his house was raided. Shafiq knew this wasn't true as he had phoned home from Pakistan shortly after his arrival and no mention had been made of such a raid. The SAS man went on to say that he had a report that Shafiq was a member of the Al Muhajeroon (this is not true). He went on to suggest that Shafiq had attended a march in London on September 19th (just after the September 11th attacks) and that he had been recruited to join them.
40. Rhuheel says that he was taken before the British officer and interrogated for about 3 hours. He said that one of the U.S. soldiers had a gun to his head and he was told that if he moved they would shoot him. The SAS officer said, "You are funded by the Al Muhajeroon to fight." He was told to admit that he came to Afghanistan for holy "jihad".
41. He was questioned as to how he paid for his ticket. The SAS man also mentioned three maximum security prisons in Britain, including Belmarsh, and said that he

would be sent there. When he was taken back from there the soldiers forced his head right down and threw him on the floor, forced to his knees with his head forced onto the ground and hands pulled up backwards, forcing his head right down into the broken glass and stones on the ground. When he screamed, the force was increased. The floor consisted of sand, broken glass and stones and Rhuhel's hands were cuffed at the back and his feet were shackled.

42. Asif also was told that he would be going to one of the three maximum security prisons back in England. He says that prior to being questioned by the British soldier he had been interrogated by US soldiers on two occasions in Kandahar and one in Sherbegan. The SAS officer asked him to set out his story and he was asked for a description of the area where he lived in England.

43. He was taken back to see the British SAS officer a second time the following day. He was told that "***your friends have confessed to being members of the Al Muhajeroon***". He asked him to admit that he was also a member. He showed him a list of names and suggested that a particular doctor from the Central Mosque in Birmingham paid for him to go out to fight in Afghanistan. The SAS man then left the tent and the U.S. soldiers roughed him up again (as Rhuhel has also described). Asif was taken on a third day again to see the British SAS officer and was told that he hadn't told the truth. He was then threatened that because he wasn't telling the truth he would go straight back to England and be placed in Belmarsh or one of the other high security prisons. Asif thinks that the first time that he was questioned was for about 6 or 7 hours, the second time for about 2 hours and the third time for about 40 minutes. On the first occasion he was told by the SAS man that he was not going to be beaten 'because you are with me'.

44. Asif says '***I was told of maximum security prisons in the United Kingdom, including Belmarsh. The British officer told me that within a few weeks I would probably be taken there to be tried***'.

Removal from Kandahar

45. Shafiq says *'I was at the Kandahar camp for just less than two weeks. During that period I was interrogated about four times. We slept in a tent. I was in a tent with Rhuhel but Asif was in a different tent. There were about 20 of us in each tent. The tents were surrounded by barbed wire. We had to sleep straight on the ground, on the gravel. We were not allowed to talk and as Rhuhel explains (see below) they were deliberately stopping us from sleeping. Around midnight, probably on the 12th or 13th January 2002, US Army men came in and everyone in the tent was told to move to the back. They then shouted out three numbers. They called out my number (78) and I was taken out after the other two. It was raining and absolutely freezing cold. By this stage I was wearing the blue cotton boiler suit that we'd all been given and sandals. I was made to lie on the ground face down. A sergeant put his knee on my back and a soldier put shackles on my wrists and on my ankles. Then a rice sack was placed over my head. The sack was made from very coarse material and there were no holes to see through. I was then led about 300 to 400 yards with one guard abusing me and swearing at me. When we stopped the other guard, for no reason, hit me on the back of my head with a hand gun. I had been taken to another tent where I remained to sleep that night (the shackles and sacks were removed). There were about 20 people in that tent. The tent had a wooden floor although it had got wet from the rain. There was no bed or mattress or anything'*.

46. In the morning all the prisoners in this tent were made to sit at the back of the tent and one by one their numbers were called out. They did not have any idea what was going on. Again, the same procedure was adopted, they were brought out and made to lie on the ground and shackled with a rice sack placed over their heads. This time Shafiq says *'I had to run as fast as I could with my legs shackled and I was bent over with a sack over my head. We were taken to another tent. There they cut off all my clothes and forcefully shaved our beards and heads. I was taken outside. I was completely naked with a sack on my head and I could*

hear dogs barking nearby and soldiers shouting "get 'em boy". Although I couldn't see I had a sense that there were a lot of soldiers around. I was taken, still naked with a sack on my head, to another tent for a so called cavity search. I was told to bend over and then I felt something shoved up my anus. I don't know what it was but it was very painful. I was then taken over to another part of the tent where the head sack was removed and photographs were taken of me. I think they were head and shoulder, full face and profile. After the photos I was given an orange uniform, of polyester trousers and t-shirt. Then new chains were put on. These were handcuffs connected to a box that was held in between our wrists and from this box another chain went around the waist and then a different chain came down to other cuffs which were placed around our ankles. They were on extremely tight and cut into my wrists and ankles. I asked if they could be loosened but they refused. Then black thermal mittens were placed on my hands and taped on around the wrist. Goggles were placed on my eyes. These were rather like ski goggles but with the eye pieces painted out. Then ear muffs were put on like builders' ear muffs. A face mask, which was rather like a surgical mask, was put round my nose and mouth and I was given orange socks and plimsoles to wear. I was then taken outside. I could barely hear or see a thing and was made to sit down on the gravel ground. I was left there for hours and hours, perhaps nine or ten altogether. It was freezing and I was not allowed to move, I sat cross legged. I was aware that others sat beside me. Throughout that time I was given no food or water, the last meal I'd had was the night before. Whilst on the runway, they pulled down our face masks and gave us an MRE (meals ready to eat) packet. However, it was impossible to eat it because the packet was placed in our hands but as we were shackled and still had all the other stuff such as mittens on, you couldn't open the packet or reach your mouth with the food. They gave us no water and then they just took the food away. I was not able to eat any of it. We were then all made to stand up and I was given a sort of denim jacket which was placed over my shoulders with the top button tied but our arms were not in the sleeves. A thin strong rope was tied around my arm and connected, I believe, from my arm to the arms of other detainees. We were made to walk for a long time. I think we were simply

walking round and round in circles. Because of the rope round our arms if it got pulled it became extremely tight. As we were walking I could sense that cameras were flashing and I suspect that they were also videoing us’. It was at this point that it became clear they were going to be transported by airplane out of Kandahar but they were not told their destination.

47. Asif who was on the same plane as Shafiq describes very similar experiences. He says **‘I’d been in a different tent from Shafiq and Rhuhel. I remember three numbers being called out. I was number 79 and I was taken in the same way as Shafiq described to the wooden floored tent. In the morning we were all made to sit on our knees and I waited about three hours until my number was called out. I was also called into the tent and the same process happened of being shaved and stripped naked. I do also remember having a brief examination with a doctor who looked into my eyes and asked if there were any problems. I explained that I had stomach problems as I was still suffering from dysentery. He simply gave me some tablets’.**

48. Rhuhel was not taken out of Kandahar at this time. He remained there for another month. His number was 102. It was never explained to him why he was left behind.

49. Shafiq and Asif describe being led onto large cargo planes. They were taken one by one up onto the plane. They estimate that the whole process would have taken about two or three hours. They were made to sit on benches that had no back. They still had on gloves, face masks, head muffs and they were shackled although the rope around their arms was removed. A further chain was then put around their waist and legs and this was then connected to the floor. Shafiq says **‘my legs were in a painful position but if I tried to move to get comfortable they would kick you’.**

50. The plane took off and they were in the air for many hours. They had to remain sitting in this very painful position with the shackles cutting into their wrists throughout this time. Asif says **‘I was very tired, not having slept at all. During the flight at some stage the face masks were removed and we were fed peanut**

butter and jelly sandwiches and orange segments. Then the mask was replaced. It was absolutely freezing during the plane journey. When we eventually landed, it was obviously somewhere very hot. We could tell as we came off the airplane that it was in the middle of the day, it was very light and very hot. I had no idea where we were. I was then led from this plane onto another plane. On the way to the other plane we were moved, bent double quite quickly. A soldier at some point, stamped on the chain between my ankles which brought the cuffs around my ankles down very hard. It was extremely painful. I was not offered the opportunity to use the toilet at any stage. I was again made to sit in the same position, shackled to the ground on this other plane and we waited for a couple of hours before take off. The second journey was shorter than the first. Eventually we arrived in Cuba; although at that stage we didn't know it was Cuba'. Asif and Shafiq have no idea where they changed planes but Rhuhel who describes a similar experience on his flight was told by soldiers that they had landed in Turkey. All three describe the plane journey as a nightmare with Asif saying that he was by this stage '**done for**', he thought he would not survive the second flight but was too weak and too frightened to do or say anything.

51. Shafiq says '**during the plane journey the shackles had been on so tight that they really cut into me. I still have scarring on my left arm from them and I lost the feeling in my right hand for a long time because they were on so tight**'.

52. Whilst Asif and Shafiq were on their way to Guantanamo Bay Rhuhel remained in Kandahar. He describes the routine continuing as before. He states he was further interrogated, once by MI5 and separately by the Foreign Office. He asked after Asif and Shafiq but was told by the MI5 official in the first interrogation that they had gone home because they had cooperated. He was also interrogated on four further occasions by the Americans. He reports that after Shafiq and Asif left conditions in Kandahar started to deteriorate. He states '**they kept moving us around from tent to tent. This went on all day and night so it was impossible to settle down for the night. They also shone powerful lights into the tents which made things worse. There were no cages in the tents but you were separated from the**

person next to you by barbed wire. You were not allowed to communicate with anyone in the tent. I started to feel crazy from the isolation. About a week before I left I knew I was going to Guantanamo. I was told this by one of the soldiers. My conversations with the soldiers were the only real relief I had because it was human contact'.

53. Rhuhel says that just before he was flown to Cuba in February 2002 he was visited by somebody from the Foreign Office. It was a few days before he flew out. There was also somebody present from MI5 who said that he had seen his friends in Cuba and they had confessed to everything. He said if you admit to everything you will go home. At that point Rhuhel was starving, frightened and living in appalling conditions at the prison camp. He had been surviving on only two biscuits a day and was sleep deprived. He had not been allowed to talk to anyone and at night was woken up every hour on the hour. He decided to agree with everything put to him so that he could be returned to England. He admitted that he was paid for by the Al Muhajeroon and that he had flown to Afghanistan to fight holy "jihad". He said that he ***'couldn't hack it'***. Rhuhel says that ***'I was in a terrible state. I just said 'OK' to everything they said to me. I agreed with everything whether it was true or not. I just wanted to get out of there'***. He says that the British officials could see the state he was in but did not seem to care or even ask him about the conditions. Five days later (on the day he left) the Foreign Office representative came to see him. He was pleasant and dressed in a suit. He told Rhuhel that he was going to Cuba. He was not concerned by Rhuhel's health and was not prepared to give him any information about what was happening.

54. The Foreign Office did not inform Shafiq and Asif's families that their whereabouts were known until they were in Cuba. Rhuhel's family was told when he was in Kandahar. Shafiq and Asif saw no one from the Foreign Office whilst they were in Kandahar.

55. All three talk of the use of particular interrogation techniques in Kandahar. Shafiq explains that ***'when the soldiers would come into the tents in Kandahar they came with dogs. If you made any sudden movements the dogs would be***

brought right up to you snarling and barking very close to your face'. As described above by Asif the interrogators and guards used physical violence and all three had their beards and head shaved when they were placed on the plane for Guantanamo. They believe that forced cavity searches were used to degrade and humiliate them. They were systematically deprived of sleep, whether or not an interrogation was pending and all believe they were deliberately kept on a very restricted diet in order to further physically weaken them.

Guantanamo Bay

56. When they arrived in Cuba Shafiq states ***'we were taken off the plane and made to sit on the ground outside somewhere. I was still goggled and masked. At that stage they took my shoes off. We were then led onto a bus. I think there were maybe about 40 of us altogether. I later learned that we were the second group of detainees from Afghanistan taken to Guantanamo Bay. On the bus we sat cross legged on the floor (the seats had been removed) and were thrown about because of the movement of the bus, but soldiers would still punch or kick us if we moved. The bus then went onto a ferry which went over to the camp. On our arrival at the camp somebody lifted the earmuffs I was wearing and shouted into my ear "you are now the property of the US Marine Corps". We were told this was our final destination. There would be one soldier speaking in English and another in Arabic. We had arrived at Camp X-Ray'***. Asif describes very similar experiences.

57. Rhuhel, who arrived a month later, was also taken to Camp X-Ray. His journey on the plane was very similar to Asif and Shafiq but on the ferry to the actual camp he was kicked and punched by a US soldier. He states he was assaulted ***'because we had been told to keep our hands by our sides. This was uncomfortable as we were shackled and after some time I moved my hands into my lap. A soldier came up to me and said put your hand on your left knee which I did. The soldier said "this motherfucker speaks English", and then kicked me about 20 times to my left thigh and punched me as well. I had a large bruise on my leg and couldn't walk for nearly one month. There was never anyone to complain to about these sorts of attacks and I think they are still going on'***.

58. At Camp X-Ray, after they were taken off the bus, they had to sit outside for hours still shackled with the gloves, ear muffs and masks on. They were given no water even though it was extremely hot. Occasionally somebody would come round and wet their lips with water but it wasn't enough.

59. Asif states that *'after a couple of hours of squatting in that position I fell over and started shaking. I went into a sort of fit. I was taken on a stretcher into a processing room where I was given an IV tube into my arm. I was still shackled and goggled at that stage. I was in the room for about an hour and was then given a shower. Everything was taken off, all my clothing except for the goggles and the shackles. The shower was very brief, it didn't give me an opportunity to wash properly. After the shower I was taken over to a table and told to bend over (I was naked). Again somebody prodded up my anus. I don't know what they possibly could have thought I had hidden since I had been completely shackled since the last cavity search. I was then dressed and more or less carried across to another part of the tent where I was questioned by a woman who asked for my details, including my name, date of birth etc. My fingerprints were done, also a DNA mouth swab and photographs taken. I was given a new wristband which had my name and number printed on it'*.

60. Shafiq who describes a similar experience when he was processed (as does Rhuhel) also states that *'when we arrived at Camp X-Ray I was made to squat in the boiling heat outside for about six or seven hours altogether. I became desperate and eventually asked for some water. The soldiers realized I was English and a man from the ERF team (Extreme Reaction Force – see below) came and started kicking me in the back and calling me a traitor. There were dogs present barking nearby. They were very close to me but I couldn't see them. I wasn't allowed to move, if I did I would be kicked. Eventually I was taken in to be processed, I was taken to a tent and my clothes were removed. Each hand was uncuffed in turn to allow them to take my top off and then recuffed. The same happened with my trousers. I was then led to a shower. While I was in the shower, a soldier pressed me firmly against the wall using a riot shield or ERF shield. This meant that I was pressed against the wall with a dribble of water dropping on my head and couldn't wash properly. I also had my goggles on in the shower. After this I was walked naked to another table where a cavity search was conducted. This was both painful and humiliating. Having been subjected to the same search before we left Kandahar and having been kept shackled throughout the time we were transported, there*

can have been no purpose to this search other than to further humiliate or punish us. I was taken, naked, to a woman who processed me as Asif describes. I think this was meant to further humiliate me. When I was questioned by the woman about my details I told her I was British but she wouldn't believe me'.

61. After processing, their clothes were put back on by the guards. Each was walked around the tent at least twice and then photographs were taken. Shafiq states ***'I was given a wrist band. This wrist band had a photograph, name, date of birth, height and weight. When I arrived at Guantanamo I was 140lbs, but I was 195lbs when I had left the UK'.***

62. After the photographs and processing had been completed they were told they had to write a letter to their families. They found it almost impossible to write anything because their hands were still cuffed together and they had lost all feeling in them. Shafiq states that ***'I think all I managed to write was "I am in American custody". After I had done this the goggles were put back on and I was taken to a cage. At that stage the goggles and shackles were removed'.***

Camp X-Ray

63. After processing they were taken to the cages in Camp X-Ray. They describe the cage as being about 2 meters by 2 meters. There was a gap between the top of the cage (itself made of mesh) and the roof of the structure (made from corrugated iron). Asif states that ***'in my cage there were 2 towels, 1 blanket, 1 sheet, 1 small toothbrush, shampoo, soap, flip flops and an insulation mat to sleep on as well as two buckets, one for water and one to use as a toilet (urinal)'***. There were 60 people in each block each of which consisted of 6 groups of 10 cages. Throughout the time that they had been in custody, both in Kandahar and now in Camp X-Ray, they were not allowed to pray. If they tried to pray, the soldiers would deliberately disrupt them.

64. Asif states that ***'on the first night after I arrived from Afghanistan at Camp X-Ray I weighed 120 pounds, I am normally 165 pounds. When I was placed in the cage I had the goggles as well as the shackles removed and I thought I was hallucinating. I could just see a series of cages with people wearing orange. Then I also noticed people outside who were veiled. I thought they were women at first. In fact they turned out to be men who were employed to do building work on the camp. It seemed that the people building the camp were mainly Indian and South East Asian. We found out later that they were paid only about one dollar or less per hour and had to work 12 hours per day. They were under the control of the company that had been contracted to build the camp. We weren't supposed to talk to them and in fact they were escorted and guarded by the US Army. Occasionally, however, we managed to exchange some conversation with them in Urdu'***.

65. Asif also sets out the aspects of Camp X-Ray he found most difficult to deal with. He states that, ***'I think Shafiq will agree that the restrictions that were placed on us when we were in our cages were probably the worst things we had to endure. By the time Rhuheel arrived things had improved a bit but in the first few weeks, we were not allowed any exercise at all; this meant that all day***

every day we were stuck in a cage of 2 meters by 2 meters. We were allowed out for 2 minutes a week to have a shower and then returned to the cage. Given the extreme heat, we sweated a lot and the area obviously began to smell. During the day we were forced to sit in the cell (we couldn't lie down) in total silence. We couldn't lean on the wire fence or stand up and walk around the cage. We were fed three times a day, but given very little time to eat the food. The quantity of food we were given was also very little. It is not an exaggeration to say that sometimes we were only allowed about one minute in which to eat our food. This was not too much of a problem if the food was on a plate, but occasionally it would be in packets and we would not be able to open the packet before the food was taken back. At this point, the US marines ran the camp and they were very brutal. Conditions in Camp X-Ray were very difficult, especially in the first month. The cells were often under direct sunlight for hours on end. Shafiq says *'the way my cell was located I got more sunlight than the others and had to put up with direct sunlight for most of the day'*.

66. It was extremely hot but they were not allowed to take their tops off. They still had no idea why they were there. In fact for the first 7 days Asif and Shafiq did not know they were in Cuba. They did not know when their ordeal would end. All three say that they simply could not understand what the interrogators wanted from them.

67. Rhuhel says that when he arrived he gradually developed a technique of staring at the wire mesh or at the ground and letting *'my mind go blank'*. The area around Camp X-Ray was lit with very powerful (like football stadium) flood lights. At night, the area was lit up as though it were the middle of the day. The floodlights were used throughout their time at Camp X-Ray. There were also snakes, scorpions and a variety of unusual insects. Rhuhel says that *'I remember that a number of detainees were bitten by scorpions in my block (I was still separate from Asif and Shafiq) and we always had to be on the look out.* (If bitten by a scorpion, flesh had to be dug out from the bitten limb to remove the infection.) Asif says in Camp X-Ray his comfort items had been removed for some reason. They would place removed items outside the cage. When they came to return the items they

lifted my blanket and underneath there was a snake. It was impossible to sleep or get any rest. When they were sleeping, they had to keep their hands outside their blankets. In addition, the noise of the construction work going on (they were extending Camp X-Ray) was such that it would have been impossible to sleep anyway.

68. Another aspect of detention in Camp X-Ray which caused considerable distress was the toilet facilities. In the cages there were two buckets. One was for urinating in and the other was for water. The bucket which was used for a toilet was emptied once a day and the bucket that was for water was filled on average twice a day with a hose pipe brought into the cell block by the guards, but this depended on their discretion. The detainees had to use the water in the bucket to drink, wash and for ablutions. If they wanted to "**do a number 2**", they had to ask permission from a guard who would shackle them and then escort them to a portaloo outside the blocks. The guards would stand staring at them with the door of the portaloo open and with their hands in shackles as they sat on the toilet. Because of the shackles they were also unable to clean themselves.

69. Shafiq says '**very often the guards would refuse to take us to the portaloo outside and therefore people started to use the buckets in the cells. Many of the people who were detained in Camp X-Ray were ill, often suffering from dysentery or other diseases and simply couldn't wait until the guards decided they would take them to the toilet. I think the guards also knew how importance cleanliness is to Muslims and took a sick pleasure from seeing us degraded like this. The smell in the cell block was terrible and in the early days this was made worse by the fact that we had to sit in the middle of the room, described above, without leaning on the cage, talking, praying or moving around the cage**'.

70. After some time the conditions improved by that they mean that they got slightly more food and could talk to each other – i.e. the restrictions on conversations were slightly relaxed. They could put their hands underneath the blankets when they went

to sleep. The conditions improved slightly after they 'confessed' to allegations put to them during interrogation. They were also given shorts for decency.

71. A complaint all three make is that the orange jump suits they were given as a uniform had a long slit down the side. This meant that when they prayed (if they were allowed) the jump suit would open to reveal their groin area when they bent down. In Islam a man must be covered from his midriff to just above his knees when he prays and so the prisoners took to wearing their towels around their waists when they prayed. This became a source of a lot of conflict with the guards. The detainees were also prevented from calling out the Azzan or call to prayers. Asif says that when people called out the Azzan '***The Americans would respond by either silencing the person who was doing it, or, more frequently, play loud rock music to drown them out. They would also go into the person's cage and shackle them, leaving them there for 4 or 5 hours.***

72. They were never given prayer mats and initially they didn't get a Koran. When the Korans were provided, they were kicked and thrown about by the guards and on occasion thrown in the buckets used for the toilets. This kept happening. When it happened it was always said to be an accident but it was a recurrent theme.

73. Eventually the prisoners went on hunger strike because of the way that they were treated and in particular the way their religion was treated (see below).

74. Asif says that '***it was impossible to pray because initially we did not know the direction to pray, but also given that we couldn't move and the harassment from the guards, it was simply not feasible. The behaviour of the guards towards our religious practices as well as the Koran was also, in my view, designed to cause us as much distress as possible. They would kick the Koran, throw it into the toilet and generally disrespect it. It is clear to me that the conditions in our cells and our general treatment were designed by the officers in charge of the interrogation process to "soften us up".***

75. After Asif and Shafiq had spent about a week in Camp X-Ray, the Americans

brought along someone they referred to as "the Chaplain". They believe that he was in fact an American Muslim. Asif states '**he started to read the prayers and I think the idea was that he would be leading us in prayer. In fact, nobody knew what was going on and we were all uncertain as to whether we were allowed to participate. Nobody knew or trusted this individual and as a result he was left to pray on his own. This did not stop the Americans from filming him and suggesting that he was leading regular prayer groups**'.

76. As set out above, after the first month or so, at about the time Rhuhel arrived, things were relaxed to the extent that they managed to speak to some of the Military Police ('MPs'). These MPs told the detainees that their superiors had briefed them before they had arrived. In these briefings, the detainees were described as wild animals. As Asif says, '**they were told that we would kill them with our toothbrushes at the first opportunity, that we were all members of Al-Qaeda and that we had killed women and children indiscriminately**'. This obviously affected the way they treated the prisoners.

77. Rhuhel was in a different block from the other two in Camp X-Ray. After processing he was put in his cage but taken out 20 minutes later. He had a full medical, was stripped naked in front of a woman and blood was taken from him. He was then put back in his cell. He says that '**you could move around but couldn't speak. After about 5 days I was allowed to talk to my neighbours but they were all Arabs and I did not understand what they were saying**'.

Interrogations

78. The first interrogation at Camp X-Ray didn't taken place until the second or third day after they arrived.

79. The first interrogations for Asif and Shafiq took place in a tent. By the time Rhuheel arrived they had built some booths (see below). Shafiq says **'In the tent, there was somebody who introduced himself as being from the British Embassy in Washington and a civilian from MI5. There was also an American soldier behind the table. There were at least 7 or 8 others standing in the tent behind me, but I was not allowed to look back. I was put in a chair with an armed soldier nearby. I was asked my name, address and family details. I was also asked for my phone number and other information about my family. The MI5 officers told me, in no uncertain terms, that if I did not cooperate they could make life very difficult for me. They kept insisting that I tell them I had gone to Afghanistan for "jihad". They told me that if I agreed to this, then I could go back to England'**.

80. During the first several weeks the American interrogations with all three consisted of pressing them to **'just say you're a fighter'**. Asif was told **'if you just say you're a fighter, because of the Geneva Convention when the war is over you'll get sent back to England'**. Rhuheel was told **'just say you're a fighter and you'll go home'**. He was told **'you've come to kill American and British soldiers, coalition forces'**. They talked about **'allied forces'**. They referred to the Northern Alliance as being the same as **'allied forces'**.

81. Asif comments **"we were aware that the first thing that appeared in our American files was something like 'I went to Afghanistan to kill American and British and allied soldiers'. We never signed anything but the interrogators had us one way or another after some weeks of interrogation agreeing to this. We did not all of us say we did."** In Asif's case he eventually just nodded.

82. Asif describes the way that the interrogation would go. He was accused of meeting Mullah Omar, and money laundering for Bin Laden in England. He was given what they called the '**big fish chart**' with Osama Bin Laden at the top, money launderers who seemed to be in the middle, and at the bottom was '**fighters**', so "***I was led to think that the best thing to admit to was to being a fighter. The trouble is once you admitted you were a fighter they then wanted to get you up to the next stage up the chart. So even if you said that you were a fighter to get them off your back, that wouldn't stop them. They would still continue. They just want you to say something and once they've got you to say something they then keep pressing for something else. So you think that you're in the end saying something that will stop them but it just encourages them if you do.***

83. ***The series of questions asked in the early stages of captivity would be asking your whole life story and would last at least four hours each, hours and hours and hours. We were very tired. We were dehydrated. We had very little food and we were already completely exhausted from the whole experience in Afghanistan. One day in the heat of Cuba knocks you out anyway. We were completely unused to the heat. You came out from the slight shelter of your cell into the full scale Cuban heat which was even worse. There was a bit of a roof over your cell providing some shelter but it was pointless as the sun would hit directly at different times of day and if there was rain the rain would hit you too. When you came out of that to interrogation then the full heat of the sun would hit you. The interrogation tent in those early stages didn't have air conditioning.***

84. The first interview Asif and Shafiq had was with English officials (Ruhel's first interview was with an American). In all their interviews the interrogator kept saying 'just say you are a fighter'. Eventually all three said 'yes, I was a fighter' one way or another to the US interrogators. They couldn't take any more.

85. Shafiq says '***I was interviewed by MI5 at least twice when I was in Camp X-Ray. After about 2 or 3 weeks in Camp X-Ray, I was also interviewed by US forces interrogators. This time, I was interviewed in a booth. I continued to be***

interviewed in these booths until I left. The Americans kept insisting that I say I knew Mullah Omar. I began to realize that in each interview they wanted me to admit to something more serious until they forced me to say I was in Al-Qaeda. This was not true and I started to refuse to agree with the interrogator, but I was desperate to get out and eventually I just accepted things they put to me'.

86. Rhuhel was interrogated by Americans on the second day he arrived. His interrogation was similar to Asif and Shafiq. On the third day he was seen by MI5. He told them the same thing he had said in Kandahar. They came on the next day and insisted he say he was a fighter. He refused to say he was a fighter or that he had gone for "jihad" to MI5.
87. After this interrogation he was not spoken to for 4 or 5 months. In Camp X-Ray the only people around him were Arabs. He did not speak Arabic and couldn't communicate. On describing the conditions Rhuhel says '*I couldn't talk to the guys in my cell block so I would just sit there staring at the wires all day. This went on for 5 months. I used to try and speak to the guards but they wouldn't speak to me. I felt totally isolated*'.

Interrogations at Camp X-Ray (generally)

88. In the interrogation booths, used after the tent, there was a table in the middle, often screwed to the floor. There was also a chair on which the detainees were ordered to sit and in front of this chair there was a metal hoop screwed into the ground. When they were walked into the interrogation room, they had to sit down and then their leg shackles were in turn attached to this hoop using a huge padlock. This is described as being 'long shackled'.

89. Asif says ***'I should explain that in the early days, we had to go from the cages to the interrogation booths on foot which was extremely difficult as we had to shuffle along, constantly being pushed and harassed by the guards, wearing the leg irons. This made it very difficult to walk and the leg irons would cut into our ankles. After a while, they began to introduce trolleys which I think have been seen in photographs. Many months later, they introduced golf carts and we would be loaded onto the cart and driven to the interrogation booth'***.

90. As described earlier in the interviews, they would be told that the interrogators had information that each of the detainees had met people like Mullah Omar. Shafiq says, that ***'in my case they told me they found my personnel file in a cave in Afghanistan and that it was clear I was linked to Al-Qaeda. This is ridiculous, but they insisted that I accept this. The interrogators would keep saying "tell us you're a fighter, tell us you're a fighter". This would go on for hours on end'***. Asif and Rhuhel describe similar interrogations.

91. In Camp X-Ray whenever they were interrogated, they were never given any notice. The process was that an escort team of usually 2 or 3 military police officers would arrive at the cages. They would be carrying chains and it would be obvious at this point that somebody was going for interrogation. When they would reach the cage of the particular detainee they wanted to speak to, he was told he was going to "reservation" which was the term they used for interrogation.

92. Shafiq says ***'the guard came to the cage, told me to go to the back of the cage, put my hands behind my head with my fingers interlocking, face away from the entrance and kneel down. I was then shackled in a three piece shackle which basically meant my hands were tied, in front of me, and then attached to a belt which went round my waist. The chain of the leg irons I had around my ankles was about a foot in length which meant that I could not walk properly but rather I had to shuffle. If I was forced to move quickly as sometimes the guards would push or shove us, the metal restraints of the leg irons around my ankle would dig in and cut the skin around my ankles. This was how I was taken to my first interrogation, but things changed slightly (see below) when they built the booths'***.

93. All three report that the leg shackles would cut their ankles. Before they set off to the interrogation block they would be frisked, usually done very aggressively. As they were led off to the interrogation block, they had to have their heads down (almost bent double) and shuffle to the interrogation room with an MP on each side and one behind. They would insist on putting the shackles on their skin and not over their trousers which would have given them some protection from the sharp edges of the shackles and the scraping. Asif says ***'one thing that always stuck with me was that the handcuffs had "made in England" written on them'***. Eventually, in Camp Delta, after almost one year, the authorities agreed to put the shackles over the detainees' trousers which restricted them in the way they wanted, but did not cut into their ankles.

94. Shafiq says that in the early days before they introduced the trolleys (and later the golf carts) ***'the MPs would compete to see who could get their detainee to the interrogation booths the fastest. They would push, pull and try to force us to go as fast as possible. If you tripped, (which was very likely given that the leg irons were tight and it was impossible to move your feet properly) they would assume you were trying to escape and force you to the ground jumping on top of you. Often detainees were kicked and punched when this happened. The suggestion that somebody could try and escape in these circumstances***

is ridiculous and I believe it was an additional part of the process of “softening us up” for interrogation.

95. As set out above, in Camp X-Ray, the tents that they used for interrogation in the first few days were replaced by booths. These were a long way from the cages (at least 300 meters). They had to cover the whole distance in the manner described above.

96. When they got to the booths the MP would announce that they had arrived over the radio. They would refer to the detainees as “packages” rather than by their names or numbers. Shafiq says ***‘we were then taken into the interrogation block with an armed escort. We were led into the room whilst the armed officer (usually armed with a rifle or a shot gun) stood outside the door. In the booths we were searched again and then sat down on a chair. The MPs would then padlock us to a hook which was attached to the floor (see above)’.***

97. They were usually left in the room waiting for an interrogator to turn up. Sometimes the interrogator was already there but other times they would be made to wait for up to 3 hours. Shafiq says ***‘I would like to think there was some purpose to these silly games, however it is equally likely that it was simply incompetence. Whilst we waited in the booths, there was a guard who stayed there throughout. He was not armed but he was told not to talk to us. The guard would just stand there staring at us. When the interrogator came into the room, the guard would remain’.***

98. The interrogators very rarely introduced themselves. Occasionally they lied about the organization they worked for and all three men believe the names they gave were almost always false. This misinformation was quite common. As an example, on one occasion Rhuhel told an investigator that one of her colleagues from the FBI had kept him in the interrogation room for 18 hours (this was in Camp Delta). He described the interrogator. The person to whom he was complaining told him that he knew the woman and that she was not from the FBI but from Military Intelligence.

99. In relation to the interrogators, they generally changed. It was very rare to have the same interrogator on a regular basis. Shafiq says '***I only ever saw the same interrogator on three occasions at the most***'.

100. The organizations that were involved in the interrogations included the CIA, FBI, DOD, MI5, NCI (Navy Crime Investigators), NSA, Army CID.

101. When the interrogators came into the room, they did not always have files with them. It varied however and occasionally they would have notebooks or other statements with them. In Camp X-Ray they usually came in without files. Rhuhel says that '***I am fairly certain that the information about us was not shared by the different organizations and often they would attend and ask the same questions time and again. As an example, I don't think they had received any information about us from our interrogations in Kandahar***'.

102. Each interrogation started right from the beginning. The first question was always "do you speak English" which was an absurdity since knowledge of the detainees and who they were was the presumed starting point for interrogation. On occasion the interrogators even brought in a translator because they simply had no idea whether they spoke English or not. They would then proceed to ask them their name, date of birth and detailed questions about their background.

103. Rhuhel says that '***all the interrogators seemed to know was that I had been detained in Afghanistan and transferred to Guantanamo from Kandahar. After they had obtained my background details, they would start to ask me what I was doing in Afghanistan. My experiences with the second interrogation in Camp X-Ray were very similar to Asif's. They kept asking me whether I was a fighter or not. I eventually told them I was because they kept promising to send me back to England or put me in front of a tribunal***'.

104. The interrogation system was based on written statements. It was made clear to the detainees that whatever was set down on the statement was the official version

of events in the interrogation room. All three report knowing of many examples where prisoners became involved in arguments with the interrogator or refused to cooperate and in turn the interrogator would write lies in the statements and the detainee would spend months being questioned based on his alleged "admissions" which were nothing other than malicious accounts inserted by the interrogator. There was no system of redress and no way of challenging this behaviour. The same would apply if the detainee had an argument with an interpreter. Asif says ***'there was one detainee who spoke English and Arabic. The interpreter wrongly translated something he said and he interrupted to say 'no I never said that'. The interrogation continued in English but those detainees who couldn't correct the interpreter often found they were supposed to have said things they never had. Many of the detainees decided to try to learn English because the interpreters could not be relied upon'.***

105. To illustrate the power of the guards, Asif gives an example of an incident that took place when Rhuhel, Shafiq and he were in isolation because of the "Bin Laden video" (see below). Asif states ***'on one occasion there was a change over in the units who were guarding us. The captain who had been in charge of the block came to introduce his replacement to the block and to the detainees in isolation (see below). I was talking to them when further down the isolation block an inmate spat on one of the guards. Obviously I did not do it and I had two captains to witness this, but the sergeant who had been spat on hated me so much that in his statement he said that I did it. The captain knew this was false because every move that we made was monitored, timed and our conversations listened to, but also he knew it was false because he was with me at the time of the incident. One of the senior officers decided that I was to be punished for this so I remember very clearly that the captain went to speak to a major to tell him that the sergeant's statement was not true. The major apparently said that the allegation had been written up and therefore because it was in a sworn statement it must stand and I had to do my punishment. As a result of this I was sent to another part of the camp for a week and lost all my comfort items'.***

106. All three were told in their interrogations that if they accepted they were a fighter they would be sent back to England very soon. Asif says that ***'in Camp X-Ray, I was interrogated 4 times by MI5 and 5 times by the Americans over 3 months. All the interrogations seemed to cover the same ground. I thought this must mean that they had run out of questions or were not reading the results of my previous interrogations. As with others, I started to confess to everything and agreed to anything they put to me. I remember that at one point after this General Lenhart came up to us in the cages and said that we would be going home soon'***.

107. It was very clear to all three that their conditions were being carefully monitored and controlled by the interrogation/intelligence officers.

Interrogations by MI5

108. Asif says that he had a number of interrogations by MI5 officials in Camp X-Ray (see above). He states that '***in my first interview with the MI5 official, I was also told that I should say that I had gone to Afghanistan for "jihad". He said that I did not need to say I'd been a fighter because there are lots of ways that one can do jihad. This interrogation is the first one that took place in a tent. It lasted about 6 to 8 hours***'.

109. The MI5 interrogators changed over the time that the men were in Guantanamo. The first one who interviewed Asif however came back at least a couple of times. They nicknamed him "rat face" but believe his name was Chris. Shafiq was also interrogated by this man. At the first interview with him he insisted that Shafiq admit he had gone for "jihad" and when he refused to admit this, on leaving the room, he said that it was not looking good for Shafiq and that he would stay in Guantanamo for the rest of his life. He was supported in this by an official from the UK Embassy in Washington (see above).

110. It was only in his third interview that Asif was interrogated by an American.

Protest at Camp X-Ray

111. After some months, there was a slight alteration of conditions at Camp X-Ray so that it was possible for the first time to sleep at night. At the discretion of the soldiers (based on the standard operating procedures) they were allowed, once a week, to walk in a small recreation yard for about 5 minutes. Because of the acute lack of space in their cages and the fact that they were not allowed to move or walk around in their cages their legs would often suffer cramps and pains.
112. After their initial processing, on arrival at Camp X-Ray, there were no further cavity searches (though they would be frisked before each interview). All three men however witnessed other prisoners being stripped of their clothes and being humiliated. This was done in full view of all those on the block and not only humiliated the prisoner involved but caused deep resentment in the others in sight.
113. Rhuhel says that one protest in Camp X-Ray started in his block. He says ***'I saw a guard walk into a detainee's cell, search through the Koran and drop it on the floor. The detainee told him to pick it up and put it into its holder. I remember the guard looked at the Koran on the floor and said 'this' and then kicked it. Every one started shouting and banging the doors. The guard ran out of the cell and the entire camp was on lock down for half a day. On that day there was a hunger strike for three days. I did not join in. I was very isolated and did not really know what the other detainees were talking about.'***
114. About one week later whilst Asif was in interrogation there was an incident in the block he shared with Shafiq. Asif says, ***'I cannot remember the date; however, about a week before the incident I describe, a guard in Rhuhel's block kicked the Koran. This happened often in the early days, and we were eventually promised it would not happen again. When this guard kicked the Koran, people were extremely upset and went on a short hunger strike. In our block, one of the detainees who had wrapped a towel around his waist to pray (our jump suits would open at the side when we prayed which is contrary to Islam,***

in that we are required to be covered when we pray) and an MP told the detainee, who's name was Qureshi from Saudi Arabia (his photo is on the cageprisoner's website), to remove the towel. Qureshi was in the middle of his prayer and ignored them. The MP then opened his cage, which was a breach of the rules, and when Qureshi still wouldn't stop his prayers, the MP punched him violently to the face, knocking him to the ground and then kicked him. The MP's colleagues then removed Qureshi's comfort items as well as the towel. I did not see the incident itself but found out about when I got back from interrogation'. Shafiq says 'I saw the incident happen about 10 to 15 meters away from me. I clearly saw the MP punch him, knock him to the ground and beat him violently'.

115. This incident led to another hunger strike. The detainees had not been allowed to give the prayer call or Azzan, to pray properly, to have prayer mats or to practice their religion. As a result of what happened to Mr Qureshi someone shouted out that they should stop cooperating. (The whole camp went on hunger strike although Asif, Shafiq and Rhuhel did not participate.) The second day of the protest was filmed as people threw their comfort items out of their cells as a result of yet another incident.

116. Asif says that '*to be clear, the food was very limited and insufficient. When they brought the food during the hunger strike, I would eat the food that had been assigned to the other prisoners as well as my own. The hunger strike lasted for up to a month and in some cases detainees continued for 6 to 8 weeks. I think there were others who went longer. I remember clearly that people started to suffer with stomach and bowel problems. On the other hand I put on 25 pounds. This was the only time I put back any weight and that was because I was so desperate I was eating many people's rations. I did not participate because I do not believe in a hunger strike*'.

117. The detainees had also agreed not to speak at their next interrogation. In Asif's case this was to be his fourth interrogation. He explains that despite this he was put under considerable pressure so took the opportunity to set out some of their

grievances. He says 'we had all agreed not to speak at our next interrogation as part of the protest. My next interrogation was a day or two later and when I was taken into the interrogation room I refused to talk to them. This interrogation was with an MI5 man who was questioning me together with an American. I continued to refuse to talk to them until the MI5 man said that this was nothing to do with the British and that it was an American matter.

118. *At this the FBI man left the room and the MI5 official continued to question me but I still wouldn't answer. Shortly after this an Embassy official came in. This was a different one to the person who had questioned me in the tent a few weeks earlier. He said that he was not from the intelligence services but he was from the Embassy. He said that I should talk to him and he could do something about our grievances. I continued to stay silent and then he showed me letters that he said were from my family and that I would only get them if I cooperated. I was desperate to get some letters from my family so I started to speak. During the course of my discussions with him, he also took my picture without my permission but he said that it was for my family. They never received any pictures. I gave this official a long list of grievances which I know he noted down. Usually when we would give a list of grievances to Embassy officials they would never bother to write it down but I remember this clearly that he wrote down everything I said. I mentioned that I was upset about the following:*

1. *Medical – I said that I together with others were suffering with infections on our ankles as a result of the scraping by the shackles. The officials would tell us that we simply needed to wash our ankles with soap and water, but this was impossible as we only had a one minute shower per week. Often, when we were in the shower, we had barely put the soap on when they would turn the water off and take us away.*
2. *In relation to the showers I also complained that they would usually lead us to and from the showers naked and wouldn't even let us wear a towel around us.*
3. *I also complained about the quality and quantity of the food, the lack of any religious rights and I asked for them to respect our religion. I*

complained about the flood lights and the constant lack of sleep. My complaints ran to some two pages but despite this nothing changed.

119. *After two weeks of the hunger strike, General Lenhart came into the blocks, took his cap off and pleaded with the detainees to eat. They also started to improve the conditions. Gradually, as more and more people stopped the hunger strike, we got more food, we were allowed to wear shorts and we could keep our towels on as we went for a shower. The guards were also told not to disturb us when we were praying (though they continued to do this anyway) and we were also allowed, for the first time, to talk more freely to the person in the cage next to us'.*

120. *Shafiq says of the others in his block (which he shared with Asif), 'In my block, which was Bravo block at Camp X-Ray, there were other English speaking detainees including David Hicks, four French detainees, and Feroz Abbasi. I remember Feroz was getting a very hard time and he was interrogated more regularly than the rest of us. They also treated David Hicks in a very aggressive way. From my recollection, Feroz was a very quiet individual and as with most people he wouldn't describe what was happening to him. David Hicks and us three (when we were together) would always talk about our interrogations and I remember that David Hicks told me the interrogators had promised to get him prostitutes if he agreed to work with them'.*

121. *Asif also says of the general conditions, 'we were also aware, in Camp X-Ray and later in Delta, that we were being listened to and our conversations were being recorded. On the question of observation I wish to add that being under constant observation was an additional stress. We would all joke about it and sometimes make things up in order to irritate those listening. I know that the intelligence officers disregarded most of this material but it was all brought up again and put to us when the video incident took place (see below). The observations conducted were not just in relation to what we were saying, but everything we did. They would look to see if we stared at women MPs or looked down when they walked passed. They looked to see if we used*

particular comfort items more regularly than others or had any habits that they could clearly identify. As an example, if we were suffering because of the small portions, they would identify this as a weakness or alternatively if we required medical help, this would depend on our cooperation in interview. In my view it was clear that they were identifying weaknesses upon which they could play for the purposes of interrogation’.

122. All three men spoke freely to the women guards and MP’s without any problems but many others would not do this. These individuals would then be interrogated by provocatively dressed women interrogators. Shafiq says that ‘*In my case they knew I hated isolation and this was the reason they used it as the main means of punishing me*’. Asif and Rhuhel both say they found sleep deprivation was the main strategy used against them.

123. Rhuhel says ‘*I have problems with my eyes and need special lenses to correct my vision. If untreated this condition can cause permanent damage, I would get severe headaches because it would strain my eyes to read the Koran. After one and a half years I got the lenses but it was considered a comfort item which they would threaten to take unless I co-operated. In any case they never gave me the solution I needed for the lenses so it was pointless*’. (Rhuhel’s eyesight is now permanently severely damaged as a result.)

Camp Delta – Conditions

124. After Camp X-Ray all three were transferred to Camp Delta about May 2002.

The conditions in Camp Delta were more permanent than those in Camp X-Ray. The cells were made out of large shipping containers. The sides at either end had been removed as had the front. Inside each container they had constructed 6 mesh cages. The back wall, the floor and the roof were from the metal container but the side walls and the front were made of mesh. In the back wall there was cut out a square to act as a window, but this also had thick mesh across it.

125. Shafiq says that ***‘one of the effects of these mesh cages that I was surprised to discover was that looking through them 24 hours a day for weeks on end was causing damage to my eye sight. It became difficult to focus on things and when I was taken out of the cage either for a shower or interrogation, it would take me some time to adjust my vision’.***

126. A continuing problem was lack of privacy.

127. The conditions were inappropriate. When it rained, rain would come into the cage. It was also very humid and hot in Camp Delta which was made worse by the fact that they were in a metal container. The heat could become unbearable during the days and at night it was extremely cold. The detainees were never given any extra blankets despite the cold.

128. The detainees were transferred to Delta on a bus in the same way they were taken to Camp X-Ray. When they arrived in Delta, the interrogators and guards started using the idea of “comfort items” (“CI’s”) more often. Comfort items included almost anything that was not screwed or welded down in the cages. Ordinary items such as blankets, towels, face cloths, toothbrushes, toothpaste and even regulation single Styrofoam cups were considered “comfort items”. They were removed at the discretion of the interrogators or the guards depending on the standard of behaviour and the extent of co-operation. Comfort items were also used as part of a “carrot

and stick” approach to their interrogation. If they cooperated, they were given or allowed to retain certain items. If they were perceived not to be cooperating, items were taken away.

129. Delta was placed very close to the sea and as such, the salt air would cause the containers to rust. This meant that there was constant reconstruction work and therefore large electric generators were running 24 hours a day. This made it difficult to sleep. There was also constant noise from the 48 or so other men all detained in the same “block”. An unusual, but foreseeable problem that emerged in Delta was that the cages and the entire area around the containers were infested with rats. These were huge “banana” rats which would climb over the containers or around the cages. Every morning, the men would wake up to find rat droppings on their blankets or on the floor. There were also snakes in Delta but less than Camp X-Ray.

130. ***In normal circumstances such conditions would be difficult to endure. In Guantanamo Bay however we were deliberately kept hungry the whole time. We were constantly in a state of anxiety about our future and totally at the mercy of the guards.***

131. All three men say that they believe the conditions were designed specifically to assist the interrogators. They were able, with great precision, to control the behaviour of the detainees depending on the type of answers or the level of cooperation they believed they were getting. The interrogators had already made up their mind as to what they wanted and it often became a question of trying to gauge what they wanted to hear and give the right answer.

132. Those detainees who did not cooperate with them, despite the loss of comfort items and recreation (recreation was considered a comfort item and even the five minutes exercise a week could be removed if they thought you weren’t cooperating) were taken to another camp altogether and detained in total isolation (see below).

133. Shafiq comments ***“while we were in Guantanamo each of us was interrogated for hundreds and hundreds of hours by the Americans. The same questions were repeated over and over and over again.***

134. ***During the whole time that we were in Guantanamo, we were at a high level of fear. When we first got there the level was sky-high. At the beginning we were terrified that we might be killed at any minute. The guards would say to us ‘we could kill you at any time’. They would say ‘the world doesn’t know you’re here, nobody knows you’re here, all they know is that you’re missing and we could kill you and no one would know’.***

135. ***After time passed, that level of fear came down somewhat but never vanished. It was always there. We were in a situation where there was no one we could complain to and not only could they do anything to any of us but we could see them doing it to other detainees. All the time we thought that we would never get out. Most especially if we were in isolation there would be a constant fear of what was happening and what was going to happen. If it hadn’t been for the Arabs knowing by the position of the sun when to pray, we wouldn’t have known even that. We didn’t know the time. We know the dates we do know because we counted for ourselves and some soldiers would tell us enough to let us slightly keep track, otherwise there was no way and there was never meant to be any way. Sometimes the prayer call would be played five times a day, but then it would be stopped again.***

136. ***We were deliberately kept in a state of enforced boredom which increases the despair. After a year one day they came with boxes of books all in English. They were given out to people including those who couldn’t speak English. We each got something to read. It seemed to be completely accidental what we got given. We read and reread our first book, as many as ten times each.”***

[Shafiq was given a book called ‘Killing Time’ about Americans going to Afghanistan to wipe out the Taliban regime. Rhuhel got ‘Planet of the Apes’.] ***“There were a limited number of books. You soon had read all. In 2003, the books that we were given started to have a large amount of the contents torn out – for***

instance novels would have large chunks ripped out but we would still read them because we were so desperate for something to distract ourselves. The Red Cross told us that they had brought 2000 books but they had mysteriously disappeared and never got to the detainees.”

137. “*We were also told that the Red Cross had brought a large number of language books. For instance, people were interested to learn Arabic or English, etc. We briefly had access to them and then they were taken away again and we never saw them again.*” Shafiq recollects them saying “*you’re not here to learn anything, you’re a prisoner, you’re here to be punished*”.
138. Although in Delta the cages had a sink, with running water and a toilet (squat toilet) with a flush, (Shafiq says that *‘to go to the toilet we would put up a blanket, though some MPs would, in the early days, insist on taking these down’*), the cells were smaller than those at Camp X-Ray mainly because there was a bunk/bed welded to the floor of the container from which the cell block had been created. This restricted the space. Shafiq still suffers from pain in his back, legs and knees as a result of the cramped space and lack of exercise (15 minutes twice a week).
139. (In the first few months, they were allowed a one minute shower per week. Later this increased to 5 minutes per week and after 7 or 8 months in Delta, they were allowed 2 showers a week. This was still not enough because as a result of the heat and the humidity they would be constantly sweating and feel dirty. Most of the people in the cell blocks grew their beards, but if they shaved they were allowed a razor for 2 or 3 minutes once a week and then had to hand it back.)
140. When Rhuhel arrived at Delta he went to isolation straight away. He was never told why. He had not done anything wrong and believes the move was at the direction of intelligence officers. He stayed in isolation for about one month.
141. After he was taken out of isolation Rhuhel was taken to one of the blocks. He was put in a cage next to Martin Mubanga, another British detainee. Asif and Shafiq

were in the same block as David Hicks, Feroz Abbasi and Jamal Hareeth. The only person, close enough for Rhuheel to speak to though was Martin. Rhuheel says ***'Martin and I would talk about things in the UK, football, boxing and our interrogations. He was very quiet'.***

142. During this time they were interrogating Rhuheel every Sunday. They asked the same questions over and over again. This continued for 6 months. The interrogators were mostly American though MI5 officers came on one occasion. He always maintained the same account to his interrogators. They also started to show photographs of people from the UK (people he did not know).

143. (It was very clear to all three that MI5 was content to benefit from the effect of the isolation, sleep deprivation and other forms of acutely painful and degrading treatment including 'short shackling' (see below). There was never any suggestion on the part of the British interrogators that this treatment was wrong or that they would modify their interrogation techniques to take this into account or the long-term consequences of isolation, humiliation and despair. All three men express considerable anger at the fact that the MI5 agents were content and in fact quite happy that they were long shackled and attached to a hook through-out their interrogations.)

144. The quality of the questioning was extraordinarily low. Each was asked repeatedly for names and details of all of his relatives in England, in Pakistan or Bangladesh or other countries where their families had a connection (in the case of Asif his father was born in Kenya which led to questioning about bombings in Kenya in 1998). He was also asked about the 'Cole'. He did not know what the 'Cole' was (a ship in the Yemen that had been attacked). It was they who told him about these events.

145. After 6 months Rhuheel was moved to the cell opposite Shafiq. Asif had been taken to isolation over the incident with the food (see below). (He stayed there for about one month). This was the first time Rhuheel had seen Shafiq since Kandahar.

146. After about a month, Shafiq and Rhuhel were moved to Camp 2 together.

Rhuhel was then not interviewed for the next 6 or 7 months. They were there for about one month and then Shafiq was moved back next to Asif. Rhuhel stayed in the new block in Camp 2 for about another month. Again there was no one to speak to. They were all French speakers, but there were also many prisoners from Uzbekistan. After this Rhuhel was moved back to the same block as the other two. Within a week he was moved to isolation. Rhuhel says '***I complained about the food. The portions were less than normal and this was seen as a disciplinary offence. I was not ERF'd but was taken in shackles to isolation where I stayed for one week.***

147. After this he was moved back opposite Shafiq and Asif. He was then moved to another block for a night and then a third block where he stayed for about 3 months. There were mainly Arabs and Afghanis in the third block but by then he had learnt Arabic so he could communicate. After some 3 months he went back to the same block as Shafiq and Asif but within a week he was moved to isolation. Rhuhel says '***I was in my cage singing a song but this was again seen as a disciplinary offence. The song I was singing was an American rap song with some abusive words in it. One of the female guards took offence and I was sent to isolation. This is an example of how difficult it is to get by without there being any clear rules because singing by itself was not necessarily an offence. I stayed in isolation for one week and then moved back next to Asif. We stayed there for a few months. At this point I was on tier two, but I was still not getting interrogated, unlike the other two.***

148. (Rhuhel's next move was following the 'discovery' of the video and his 8 hour interrogation (see below). He had started to be interrogated for a few times by Steve but was handed over to "Sarah".)

149. Asif was also moved on occasion to isolation. He says that '***after about one month at Camp Delta, I was moved to isolation as a punishment. The reason for this punishment was that I'd been making fun of a military policeman. As a result of my jokes, I was told that I'd be given less food. When the next meal***

time came around I was given such little food that it was ridiculous. I agreed with one or two others that we would not condone this treatment by eating the food, and therefore when they came to collect the paper plate, I ripped mine up and threw it out of the cell. The guards then said that they wanted to search me and therefore I had to put my hands through the cage in the regulation fashion so that they could be chained. I refused to do this as well. I was lucky that the guards did not rely on the ERF team but I was told to leave the cell and accompany the guards. I was shackled as usual but because I was cooperating they did not rely on the ERF team. I was taken from my cage to isolation. On another occasion I scratched 'have a nice day' on my Styrofoam cup and this was seen as a disciplinary offence for which I spent another week in isolation'.

150. After this second period of isolation Asif was moved to a block which housed only Chinese speaking detainees. Given that every move was observed, recorded and monitored he takes the view that was a deliberate move to 'break him'. He also believes that the British were complicit in this decision because he explains that shortly before, he had been taken to be interrogated by two officials from MI5 (including 'rat face' – see above). There was also an Embassy official present. He says that the guards who came to take him to this interrogation were extremely aggressive and as they secured him to place the shackles on his hands one of them put such pressure on Asif's neck that he was in terrible pain. When he got to the interview he refused to speak to the interrogators. The Embassy official on this occasion suddenly started acting as a third interrogator which upset Asif even more. He told them that he had been promised for months that if he co-operated with them he could go home but they had done nothing for him. He had sworn at them and refused to identify people in photographs they put in front of him which they said were of people from Tipton.

151. The move to the block with the Chinese (possibly Uighurs) was very difficult for Asif. There was no-one to talk to. As a result he explains, '*I started to suffer what I believe was a break down. I couldn't take it any more. I asked to speak to a psychologist but all they said was that I should be given Prozac which I didn't*

want to have. The other prisoners who had this were just like zombies and put on loads of weight. I was having flash backs and nightmares about the containers and couldn't sleep at night. I was in this block for 3 months. While I was there I was interrogated three times. I kept telling the interrogator that I was about to crack up and I'm sure it was obvious that I was in a bad way. All he would say to me was that I should 'behave on the blocks' which made it clear to me that they had thought carefully about the best way to punish me and break me and decided that as I am quite sociable and like talking I should be kept with people I couldn't communicate with. I began to behave in the way they wanted. I would not make jokes in the interrogation and just answered their questions. At the end of my third interview the interrogator told me to 'hang in there' because he could see how distressed I was. I was moved from the Chinese block three weeks later'.

152. Recreation in Delta was compulsory. Initially this was quite restricted, but eventually the regime was 15 minutes of exercise/recreation twice a week. If a detainee did not go to recreation at his allotted slot, the ERF would come and take him. Shafiq says *'you had to attend even if you were ill. We did look forward, occasionally, to recreation, because it was an opportunity to stretch our legs; however the exercise had to be done alone in a small yard watched over by the guards. Initially we had to wear shackles but they eventually let us walk freely. The problem with recreation was that whenever it was your time to come to the yard you had to leave immediately. Even if you were in the middle of your prayers they would give you at the most one minute to finish and then drag you out. This was the same with the showers'.*

153. Asif says, *'returning to the question of the monitoring and observation, I should say that when we moved to Delta, a short time later, we found out that all the cages had been bugged. One of the detainees accidentally broke a tap by the sink and a microphone literally fell out. In Delta, you could talk to the people next to you without much difficulty, or opposite you but you couldn't shout or yell further down the block. This made things a little easier because we could share experiences and talk fairly openly (notwithstanding the bugs)'.*

Explanation for Detention

154. Shafiq says ***'as far as I know, none of us were ever told why we were in Cuba other than we had been detained in Afghanistan. Of course we were told that they considered us "unlawful combatants" but whenever any of us asked what this meant they refused to give us a definition'***. Asif says that ***'I was told it is easy to get to Cuba but hard to get out'***.

155. As set out above, there was never any redress when they were mistreated or rules were broken. Throughout their time none of the men ever heard of any procedure or rules, guidebook or structural process for complaining. The Americans operated according to their 'standard operating procedures' (which also governs their operations on bases in the UK but is so secret prosecutors in English Courts and the police are not allowed to see it) but no one was allowed to see these or become aware of the details other than from experience. They were never told how they could progress through the system (or indeed what the system was). They found out, through discussions with others and their own experiences, that the interrogators were applying a four tier system that was based on a degree of cooperation from a particular detainee.

156. In this system level or tier four was considered the worst. Such detainees were often removed (as set out above) and placed in a separate camp. This was called Camp Echo (see below). Level or tier one denoted the highest degree of cooperation. As far as the men understood it, many of the detainees were admitting to almost any of the allegations put to them simply to alleviate the harsh conditions. Asif says that ***'in my case I admitted to many things in an attempt to get home and to have an easier time whilst I was in Cuba'***.

157. Shafiq says, ***'I was moved from Camp X-Ray to Camp Delta at around the beginning of May 2002. Throughout my time at Guantanamo I had never been placed in isolation. Towards the end of December 2002 a new system was introduced, although we weren't aware of it as a system as such whereby***

detainees would be placed on different levels or tiers depending on their level of co-operation and their behaviour in the camp. At the beginning I was placed on Level 2, the second highest level. This meant that I had all the so called comfort items, including toothpaste, soap, cups etc. The only better position to be would have been Level 1 where you were also given a bottle of water. Apart from the time when I was questioned about a video I remained on tier two until after the video incident when I went to tier one'.

158. Despite this, different people were still placed on different tiers for no apparent reason. Many people took the view that some of those being given tier one status were simply getting it as part of an attempt to suggest that they were informers or to try and encourage people to believe that they were cooperating where as in fact they weren't.

(Re the 'level that you were placed on)

159. *"It wasn't always possible to know why you were on the level you were on.*

So far as there seemed to be a rational explanation, in relation to the 'intel blocks', ie a block where the interrogators put you, these are blocks where the people placed in them are people the interrogators think have special knowledge. They might be people who are cooperating or who are not cooperating but they've been put there because they're of interest to the interrogators. We were on 'intel' blocks all the time. The military police told us that if you looked in the computer at our files it would say 'high priority' on them and that no one else in the camp had that, but we've no idea why that was. It apparently was only there for the last year and we wonder now if it could have been because of our Court case in America although we did not know anything about that at the time or we knew nothing about that except for what one guard once let slip to us."

160. The authorities in Guantanamo have absolute power over the detainees. They are not accountable to anybody and there is, as far as the men can see, no control on their behaviour. Shafiq says that *'when you are detained in those conditions, you are entirely powerless and have no way of having your voice heard. This has led me and many others to "cooperate" and say or do anything to get away'.*

161. *"It is clear to us that the military police were not free to make individual decisions at all and that ... We had the impression that at the beginning things were not carefully planned but a point came at which you could notice things changing. That appeared to be after General Miller around the end of 2002. That is when short-shackling started, loud music playing in interrogation, shaving beards and hair, putting people in cells naked, taking away people's 'comfort' items, the introduction of levels, moving some people every two hours depriving them of sleep, the use of A/C air. Isolation was always there. 'Intel' blocks came in with General Miller. Before when people were put into*

isolation they would seem to stay for not more than a month. After he came, people would be kept there for months and months and months. We didn't hear anybody talking about being sexually humiliated or subjected to sexual provocation before General Miller came. After that we did. Although sexual provocation, molestation did not happen to us, we are sure that it happened to others. It did not come about at first that people came back and told about it. They didn't. What happened was that one detainee came back from interrogation crying and confided in another what had happened. That detainee in turn thought that it was so shocking he told others and then other detainees revealed that it had happened to them but they had been too ashamed to admit to it. It therefore came to the knowledge of everyone in the camp that this was happening to some people. It was clear to us that this was happening to the people who'd been brought up most strictly as Muslims. It seemed to happen most to people in Camps 2 and 3, the 'intel' people, ie the people of most interest to the interrogators."

162. *"In addition, military police also told us about some of the things that were going on. They would tell us just rather like news or something to talk about. This was something that was happening in the camp. It seemed to us that a lot of the MPs couldn't themselves believe it was happening. They said to us they wanted to get out when their time was done and they would not go back in. They said that they felt ashamed of the Army that these things were going on. Most of these people were reservists. Many of those at the camp were people who as reservists had been recently drafted. And many of them thought that it was a big personal mistake they'd made. We got the impression that most of them had done it because they wanted the pension that being a reservist carried or to put them through college and then suddenly found themselves in Cuba as a result and they had no choice. They told us that they couldn't say no and that otherwise they would be sent to a military prison. Some of the MPs had Muslim friends in America and they were ones who were nicest to us."*

163. *“They told us about the fact that they were going to be sent to Iraq and how they didn’t want to go. They’d come and tell us about how they read of soldiers being killed each day in Iraq. Although they didn’t want to be in Cuba, for them it was at least better than going to Iraq.”*

Camp Echo

164. The three men never saw Camp Echo but report that Moazzam Begg (see below) and Feroz Abbasi are detained there. In this Camp the detainees are held in total isolation indefinitely. They are apparently allowed a Koran with them but all the other conditions of isolation described below also apply. They are kept under 24 hour watch by a guard sitting outside the cell, though the guard is not allowed to speak to them. This means that the only people they are ever allowed to speak to are the interrogators.

Assaults at Guantanamo

165. All three report that when they were at Camp Delta around August 2002 the medical corps came round to see them and asked if they wanted an injection although they wouldn't say what it was for. Most of the detainees therefore refused to have one. A few hours later the medical corps returned, this time bringing the Extreme Reaction Force (ERF team). The ERF team was dressed in padded gear so they had pads on from their boots, padded vest, helmets like motorcycle helmets with visors, thick gloves up to their elbows and some of them had riot shields. They were always accompanied by someone who filmed them.

166. Rhuhel says ***'the ERF team would come into the cell, place us face down on the ground then putting our arms behind our backs and our legs bending backwards they would shackle us and hold us down restrained in that position whilst somebody from the medical corps pulled up my sleeve and injected me in the arm. They left the chains on me and then left. The injection seemed to have the effect of making me feel very drowsy. I was left like that for a few hours with my legs and arms shackled behind me. If I tried to move my legs to get in a more comfortable position it would hurt. Eventually the ERF team came back and simply removed the shackles. I have no idea why they were giving us these injections. It happened perhaps a dozen times altogether and I believe it still goes on at the camp. You are not allowed to refuse it and you don't know what it is for'***. Asif and Shafiq describe similar experiences but they were not left shackled.

167. One example of such an assault happened in the same block as Asif and Shafiq as well as David Hicks and Feroz Abassi. Jumah al Dousari from Bahrain, who had lived in America for some time, was already mentally ill. He used to shout all the time. The guards and the medical team knew he was ill. Whenever soldiers would walk past his cell he would shout out and say things to them. Not swearing but silly things. He would impersonate the soldiers. One day he was impersonating a female soldier. She called the officer in charge, the commander that day, whose name was

Blanche (the same person who was in charge the day that the dog was brought into Asif's cell; see below) – a staff sergeant E6, E6 being his rank structure. He came to the block and was speaking to Jumah. Shafiq says ***“I don't know what was said but the next thing he called the ERF team. While the ERF team was coming he took the female officer to one side. I heard him say ‘when you go in that cell you're going to f-ing kick him’. She seemed apprehensive. He kept shouting at her to make her say back to him what he had said. It was very odd. There were usually five people on an ERF team. On this occasion there were eight of them. When Jumah saw them coming he realised something was wrong and was lying on the floor with his head in his hands. If you're on the floor with your hands on your head, then you would hope that all they would do would be to come in and put the chains on you. That is what they're supposed to do. The first man is meant to go in with a shield. On this occasion the man with the shield threw the shield away, took his helmet off, when the door was unlocked ran in and did a knee drop onto Jumah's back just between his shoulder blades with his full weight. He must have been about 240 pounds in weight. His name was Smith. He was a sergeant E5. Once he had done that the others came in and were punching and kicking Jumah. While they were doing that the female officer then came in and was kicking his stomach. Jumah had had an operation and had metal rods in his stomach clamped together in the operation. The officer Smith was the MP Sergeant who was punching him. He grabbed his head with one hand and with the other hand punched him repeatedly in the face. His nose was broken. He pushed his face and he smashed it into the concrete floor. All of this should be on video. There was blood everywhere. When they took him out they hosed the cell down and the water ran red with blood. We all saw it.”***

168. Asif describes being in isolation. They took his Koran away from him having already taken his other possessions. His hands were shackled in front of him. He was looking back. The guard taking him held his neck to push it back so he couldn't look back. He was pushed into a corner and was punched in the face numerous times and kneed in his thigh. They opened his chains, put him on the floor of his cell and then left and locked the door before he could get up. The doctor came shortly

after, not for that reason but to give him Ensure because he was seriously underweight. She saw the heavy bruising all over his thigh. Asif asked to call the senior officer to complain about what was done to him. ***"The guards saw me talking to the doctor, called her over and told her to do nothing."*** That was the last Asif saw or heard of anyone. He told the next shift and they told him that he should have told the previous shift.

169. On another occasion Asif witnessed a man on the toilet. The guards came to take him for interrogation. He was still on the toilet. (The guards are not supposed to open the door unless you stick your hands out. That's the procedure.) So they pulled him off the toilet, shackled him and took him to interrogation. He complained, that is to other guards in the block and were told those were the orders from interrogation. There were many many further assaults. An MP even boasted that he had beaten someone in isolation with a large metal rod used to turn on the water to the blocks. He said there was no one to tell.

Interrogations at Camp Delta

170. In relation to the interrogation blocks at Delta, they fell into the following categories: yellow building, brown building, gold building, blue building, grey building and orange building. All the booths either had a miniature camera hidden in them (it was possible to see the cameras in the air vents) or they had one way glass behind which sometimes it was possible to make out other individuals using video cameras. Asif states that ***'during one particular interview with MI5, I remember seeing people behind the MI5 man filming me. Most of the interrogations in Camp 1 were in the brown or the yellow building. After they built Camp 2, most of the routine interrogations took place in the gold building and the brown building was then used for the torture'***.

171. After a while it became apparent that the interrogators were no longer interested in any "information" they might obtain from the men, or indeed in getting "confessions". Asif states that in early 2003 he was told by one of the interrogators that 'this source has no further value'. Shafiq says ***'I certainly began to think that junior interrogators were being brought in to "practice" on us because they would repeatedly go over the same ground that had been covered by another interrogator say a week or ten days earlier. They were often junior and confused about our background or the circumstances that had led to us arriving in Guantanamo'***. The interrogations continued however in the same way. They would often continue for 2 to 3 hours (sometimes 5 or 6 hours). The men would be chained to the hoop in the middle of the floor having to put up with question after question which they had answered a hundred times before.

172. ***So far as the American interrogators were concerned they did not seem knowledgeable at all about the subjects they were questioning us about. The Americans wanted to know about Afghanistan, who we knew there, who we met, what we saw. They asked us, for instance, if we saw laptops, explosives, chemical weapons, barrels, metal containers with skull and crossbones on and a danger sign and missiles and ammunition dumps and anyone with***

satellite phones. We hadn't seen anything. We hadn't even seen electricity. One interrogator, James, said to us, looking at his piece of paper, 'some of these questions are so ridiculous I'm not going to ask you'. However, Shafiq was asked questions like 'if I wanted to get surface to air missiles from someone in Tipton who would I go to?' We were asked if we had seen laptops and computers in Afghanistan with pictures of liquids and laboratories and chemical weapons.

173. *At some interrogations we were shown photographs of Donald Duck, Mickey Mouse, Tom & Jerry, Rug Rats, Abraham Lincoln, Michael Jackson, Fidel Castro, Che Guevara, Osama Bin Laden and famous people from different countries. Actresses for instance, Sharon Stone, etc. One American interrogator called Mike Jackson, from LA FBI, said that he had been sent by 'the Queen' according to him. He said that MI5 had sent him photographs because they couldn't come and had asked him to ask us about them. These were photographs of British citizens. There was one English woman with blonde hair amongst the photographs. These were all surveillance photographs taken of people as they went shopping in Tesco's, etc. or with their friends. Very different people came in fact with the same set of photos (all Americans) and none of them knew that we had already been asked about the photographs on other occasions. This in fact happened numerous times during the interrogations. We'd be asked the same thing again and again by different sets of interrogators who didn't know the answers. There seemed to be no coordination of the information that they were getting or trying to get. The Army would come and show the pictures to us, then the FBI and then the CIA. They didn't seem to pass information amongst themselves. And from the FBI different people would come from different departments.*

Isolation and interrogations (pre May 2003) – Shafiq

174. Shafiq says ***'between October 2002 and May 2003 I was interrogated maybe 5 or 6 times. Most of the interrogators simply repeated the questions I had been asked before although they did also introduce some maps of Pakistan and Afghanistan and asked me to point out what routes I'd taken when I had entered the country and where I'd stayed. They also showed photographs of Muslims who I assumed were British although I didn't recognise anybody. Around about the end of March, beginning of April 2003, I was taken to the Gold building for an interrogation. I was taken into a room where I met somebody I had not met before who was not formally an interrogator. He was there to conduct a polygraph test. Before I entered the room I met two interrogators who had interrogated me right at the start when I first arrived at Camp X-Ray. One of them said to me that hopefully if I passed the polygraph test I would be allowed to return home. I felt very hopeful that this might be the beginning of the end at Guantanamo Bay. For the first time since being detained by the U.S, I was asked questions without being shackled.***

175. ***I was made to sit on a chair facing the wall and the man placed some pads on my fingers which were connected to a lap top machine he had on a desk behind me. Additionally I had a blood pressure pad tied around the calf of my left leg, also connected to the lap top and something else was tied around my chest. I was then asked a series of questions. Throughout the period of about an hour when I was questioned I was told that I must not move at all. He first asked a couple of control questions like: 'are the lights on in the room' and 'do you drink water'. He then went on to ask me if I was a member of Al-Qaeda. He had a list of training camps and he asked me if I'd trained at any of those camps. He asked if I had special weapons training and if I had any experience or training in chemical warfare. I answered truthfully and negatively to all the questions put to me. He asked the same questions about six times each and I gave the same answers on each occasions.***

176. *After about two hours of questioning he didn't say anything to me but just left the room. After that I was taken away back to my cell and I never saw that man again. I had no idea what the results of the tests were at that stage.*
177. *About two weeks later I was taken to the Brown building where I met a female interrogator who I had met previously in the block but she had not asked me questions before. She was Army personnel, I believe, but in civilian clothing. She said to me: "congratulations, you have passed your polygraph test." I was obviously very pleased and asked if I would be allowed to return back to England. She said she couldn't give me any information about that.*
178. *I then waited for about a month and didn't hear anything. I did not have to attend any interrogations during that period.*
179. *I was aware that Asif had also been asked to do a polygraph test in fact we were both taken at the same time. Rhuhel was not taken for polygraph testing at that time (see below). I am not aware as to whether any other detainees were asked to do polygraph tests.*

Isolation and interrogations (May/August 2003) – Shafiq

180. ***After a while the guards suddenly came to collect me and moved me to Tango block (I'd previously been on Lima block). Tango block was for Level 4 detainees and all my comfort items were therefore removed. I asked why I was being moved but nobody would explain the reason.***
181. ***After about a week I was in my cell when I heard a guard talking to a detainee in the cell next to me and saying "look at that British guy next to you, we have found out that he and his two friends from Britain are terrorists and linked to Al-Qaeda as well. We have found videos which prove that they are linked to the men who carried out the September 11th attacks". When I heard this I called the soldier over and said "what is all this about?" He told me that "my superiors have told me that they have found video evidence on you and your two friends". I was extremely shocked and did not have a clue about what he was talking about. I didn't see that soldier again.***
182. ***About a week later I was suddenly collected and taken to one of the three isolation blocks, 'November'. I asked the Sergeant why I was being moved and he simply said "we don't know. The order is from the interrogators". I was placed in a metal cell painted green inside. It was filthy and very rusty. There was a tap, sink, toilet and a metal bunk. It was extremely hot, hotter than the other cells I'd been in previously. Although there was an air conditioning unit it was turned off so the cells were much hotter than the ones I was previously held in because they were completely closed off and no air could come into the cell. There was a glass panel at the hatch at the front of the cell so they could keep an eye on us. Whilst it was extremely hot in the daytime, at night when it got cold, anyway, they would turn the air conditioning up so that it became freezing. I didn't have a blanket or a mattress and had only my clothes to keep me warm so I got absolutely freezing at night. For the first week I had no idea what was going on. I was not taken to interrogation; I just had to sit there waiting. I felt like I was going out of my mind. I didn't know***

where the others were, I didn't know why I was being held there. Nobody would talk to me. I was taken out maybe just twice for showers but that was it. I was extremely anxious. Then about a week later I was taken by two soldiers to interrogation at the Gold building.

183. *I was taken into a room and short shackled. This was the first time this had happened to me. It was extremely uncomfortable. Short shackling means that the hands and feet are shackled together forcing you to stay in an uncomfortable position for long hours. Then they turned the air conditioning on to extremely high so I started getting very cold. I was left in this position on my own in the room for about 6 or 7 hours, nobody came to see me. I wanted to use the toilet and called for the guards but nobody came for me. Being held in the short shackled position was extremely painful but if you tried to move the shackles would cut into your ankles or wrists. By the time that I was eventually released to be taken back to my cell I could hardly walk as my legs had gone completely numb. I also had severe back pains.*

184. *I was returned to my cell with no explanation as to why I had been brought to interrogation and I was then left in the Isolation cell for a further week. Again, nobody would explain to me what was going on and I felt I was going crazy inside my head. Some time during that week I saw Asif and Rhuhel being brought into the November block and placed in cells further down the corridor.*

185. *The next day after Asif and Rhuhel had arrived I was taken to interrogation in the Gold building. I was long shackled and chained to the floor. There was an interrogator in the room this time. He showed me some pictures which I later discovered were stills taken from a video. The pictures showed about 40 people sitting on the floor in a field. He asked me if I recognised anybody in the picture. The picture was not very clear and I didn't recognise anybody.*

186. *He then showed me another picture where three people were sitting together and there were arrows pointing with my name as well as Asif and*

Ruhel's name. Behind the three men who were supposedly the three of us there was another person with an arrow indicating that he was Mohammed Atta one of the September 11th hijackers. I don't know whether the picture was Mohammed Atta or not, the man in the photograph had a beard whereas the only pictures I've seen of Mohammed Atta are of him being clean shaven. I believe the interrogator was from Army Intelligence. He was an American Arabic guy who I knew by the name Bashir although other interrogators called him Danny. He started basically accusing me of being present at the meeting, of being the person in the picture and of being involved with Al-Qaeda and with September 11th hijackings. I was denying it but he wouldn't believe me.

187. *When I saw the photographs I could see that they were purportedly from 2000 and I knew that I was in England during that time, which I told him.*
188. *After the first interrogation I was brought back to my cell and then a few days later brought out again. This time I was short shackled. I was left squatting for about an hour and then this Bashir came back again and he started questioning me again about the photographs and trying to get me to admit that I was in the photographs. I was telling him that if you check you will find out that I was in England during this time. After a while he left the room and I was left again in the short shackle position for several hours (I think for about 4 hours) before I was eventually taken back to the cells. When we were left in the interrogation rooms we were not provided with food and we missed meals. We also missed our prayers.*
189. *After this I was taken back to my cell and then at intervals of about 4 or 5 days at a time I was brought back to the same interrogation block where I was short shackled and left for hours at a time and not interrogated at all. This happened about 5 or 6 times.*
190. *On a couple of occasions when I was left in the short shackle position they would play extremely loud rock or heavy metal music which was deafening. Probably the longest period of time I was left in the short shackle position was*

7 or 8 hours, which was on the first occasion. On other occasions I would be left in the room for up to 12 to 13 hours but in the long shackle position. Nobody would come in. Occasionally someone would come and say that an interrogator was on their way but they wouldn't turn up. For a period of about 3 weeks I was taken backwards and forwards to interrogation but not actually asked any questions.

191. *Also during that period a marine captain, together with a number of soldiers and some interrogators turned up at my cell in isolation. I was told to get on my knees I was shackled and then moved from November block to Tango block.*
192. *About 10 to 15 minutes earlier I had seen Asif being moved in the same manner. I have no idea why I was moved. It was slightly better than being in isolation because at least it was open. However, after only three days I was then moved back again to November block. By this time Rhuhel had been moved and I'd no idea where he and Asif were being held.*
193. *I remained in isolation after this for a further two months without any comfort items at all, apart from a blanket and mat.*
194. *On one occasion when I had been questioned by Bashir I said to him how can you ask me these questions when you know I've passed my polygraph test. Bashir told me that I'd actually failed my polygraph.*
195. *On an earlier occasion when I was brought to interrogation from isolation I met with a different set of interrogators who were from Criminal Intelligence (CID). They told me that they were the ones that were going to start the tribunals. One of the guys was called Drew and another Terry. They were asking me questions about the video again and I was asking what date the video was taken because I could show that I was in Britain. He told me, "I'm not going to tell you". I said "are you trying to screw me over?" He said "maybe".*

196. *I was interrogated repeatedly about my presence at this meeting but the Americans had made up their mind and refused to accept my account. I told them in detail that at the time the video was supposed to have been taken I was working in Currys in England and going to college. When I said this, they would turn it around and say that I knew I was going to Afghanistan at the relevant time and therefore I had laid a false alibi trail before I left. Whatever I said they would ignore and refused to listen to me.*
197. *About a month after I'd first been brought into isolation for the second time I was taken to interrogation and met Bashir again. I was in long shackle position and on this occasion he also brought along a female in civilian clothing. Bashir told me that she had come all the way from Washington to show me a video. I was then shown a video on a 14" tv on the table in front of me. Before they put the video on they told me that it was an Osama Bin Laden rally in Afghanistan. Apparently the rally took place at somewhere called Turnok Farms somewhere in Afghanistan.*
198. *There was no sound on the video but you could see a number of men sitting down and Osama Bin Laden appearing and giving a speech. I wasn't sure whether it may have been filmed by a hidden camera. The quality of the picture was not good. She suggested to me that the three men sitting down that had previously been pointed out in the photograph were me, Asif and Rhuhel.*
199. *I said it wasn't me but she kept pressing that I should admit it. She was very adamant. She said to me "I've put detainees here in isolation for 12 months and eventually they've broken. You might as well admit it now so that you don't have to stay in isolation". Every time I tried to answer a question she insisted I was lying. She kept going on and on at me, pressuring me, telling me that I was lying, telling me that I should admit it. Eventually I just gave in and said "okay, it's me". The reason I did this was because of the previous five or six weeks of being held in isolation and being taken to*

interrogation for hours on end, short shackled and being treated in that way. I was going out of my mind and didn't know what was going on. I was desperate for it to end and therefore eventually I just gave in and admitted to being in the video.

200. *I was the only one out of the three of us to see the video. I could not bear another day of isolation let alone the prospect of another year and can only imagine how terrifying it must be for Feroz Abbasi or Moazzam Begg being in detention and isolation for so long.*
201. *As soon as I broke down and admitted that it was me she just got up and left the room and then I was taken back to my cell.*
202. *After that I remained in isolation for another five or six weeks. I was not taken for interrogation, apart from to Brown building where the FBI showed me photographs of various people asking if I knew any of them but I didn't. Apart from those periods I was left on my own in isolation, not knowing what was going to happen to me or what was going on. I thought that perhaps now I would be tried for a crime although I didn't know what was going on with Asif and Rhuhel.*
203. *After about five or six weeks I was moved to Oscar block (another isolation block) where I became aware Asif and Rhuhel were being held. I wasn't able to speak to them as I was at the other end of the block. I must have been there for a further few weeks, again I was denied 'comfort items', denied everything apart from showers two or three times a week. During this period they stopped allowing us out for exercise at all, until the International Red Cross told them that they had to let us exercise. Whilst I was held on Oscar block I was not taken for any interrogation.*
204. *Then, around the middle of August 2003, I was moved to another camp within Camp Delta and placed on Echo block. This time I was placed on Level 1 and was given back all my comfort items and additionally given a bottle of*

water. Nobody explained why I had been moved back to this block. About two weeks after being on Echo block I was called into the Brown building where I met for the first time an interrogator called James, from Army Intelligence. He told me that I would be moving into the same block in cells next to Asif and Rhuhel. He didn't ask me any questions. I asked him what was going on with the video and everything and he said I will be seeing you later in the week and I'll explain what's going on.

205. *After that meeting I was then taken to Kilo block where Asif already was. Kilo block is run by Intel (ie by the interrogators who decide what you're entitled to and what you're not entitled to). I had previously been on an Intel block when I was held in Lima before being moved to isolation.*

206. *Rhuhel was brought to Kilo block the next day and the three of us were able to talk to each other. I think that the reason we were taken away from isolation to this block was because the same interrogators were now dealing with us and they may have thought they would get more information out of us if they allowed us to talk to each other as the blocks were bugged so they could overhear our conversations.*

207. *Over the next two weeks every day I was brought to the Brown building to be questioned by the new interrogator James, from Army Intelligence.*

208. *During the first two weeks I was on Kilo I was brought every day to be questioned by James. We would be brought in succession, usually Asif first, then Rhuhel and then myself. He started asking me lots of questions about my movements during the period of the video in 2000. He was asking for alibi evidence. I told him where I was working and when I was at university and that he could get my records to prove that I was in England. He was gathering various details.*

209. *On one occasion he asked me to do a voice stress analyzer test. He told me that it was better than a polygraph. I said to him that I didn't want to do it*

as I had already passed my polygraph test, even though Bashir had said I had failed. He told me I would have to do it but I refused. The reason I refused was because I felt they were playing a game. They had previously told me that I had passed my polygraph and I would be going home and then they told me I had failed my polygraph. I felt they kept moving the goalposts and I didn't want to co-operate with their tests any more.

210. *During the time I was questioned by James he would bring cakes in to eat. The last interrogations I had with James he started showing me photographs of other detainees at Guantanamo Bay and asking me if I knew them. I said well, yes, I do, because I've seen them here. I felt that he was clutching at straws to try and find a way of implicating me in some way or other. This seemed to be part of a pattern of encouraging people not just to give information in interviews but also to inform on others in the camp. They would announce upon loud speakers (particularly when people were released) that if we co-operated with them they would release us. We knew this included acting as an informant.*

211. *After the last interrogation with James I was told I was now going to be handed over to Navy Intelligence. However, before this happened, whilst I was still being questioned by James in September 2003 I was brought into interrogation and I was left to sit on my own for 8 hours waiting for the interrogators to arrive. I had been fasting that day and when it was the end of the day I asked for a glass of water but was told I could not have any. I also asked for food and to pray but they refused to allow me. Nobody came to see me that day and I was taken back that evening. Then the next day I was brought to interrogation and this time the British officials arrived. These included a British Embassy official who I knew by the name of Martin and two MI5 agents named Lucy and Alex.*

212. *During the first consultation with Martin, he asked me if I was okay, or if I had any problems. I told him that I'd been kept in isolation for three months for no reason. I also told him my knees were in a lot of pain because of the*

lack of exercise I was getting. He told me that he had two letters, one from my mother and one from my brother which he took out and I actually saw them but he said he wasn't allowed to give them to me until they had been cleared with the authorities. I never actually saw those letters. I hadn't heard any news from home since about February 2003. I asked him what was happening, whether I was going to be tried, whether I would have lawyers, and various other questions. He said MI5 officers would be coming the next day and they would answer my questions. I should say at this point that in our experience if MI5 were to visit the camp we were never left in isolation. We think this is because they would ask each time what level we were on (after the level system started). We don't know if it was for their records. We know however, that they would know we'd been in isolation if only because we told them.

213. *I was returned to my cell that night and the next evening all three of us were taken to the interrogation block (this time it was the CIA building). I was taken to Orange building where I met the two MI5 officers, Alex and Lucy. I had previously met Lucy on two occasions, once in December 2002 and once in April 2003. I had previously met Alex in June 2002. They asked me some questions about what I was doing during the year 2000. I became quite angry and said look, you've got all my files, and you know what I was doing in 2000 and I explained that I was not in the videos. I told them that I was working and had been at university during this period in England. They then said we don't need to ask you any more questions. I asked what was going to happen to me, whether I was going to get to see a lawyer and the other questions I had asked the Embassy guys. They told me that they couldn't answer those questions that the Embassy man should have answered those questions for me. That was the last I saw of any British officials except Martin who I saw the day before I was released. I carried on seeing James a few times before being handed over to Navy Intelligence.*

214. *After this we were still held on Kilo building and would occasionally be brought for questioning by Navy Intelligence and a guy called Romo. I was*

asked similar questions to before and was told that basically they believed us but we were a political pawn now.

215. *This was because some British detainees were, they said, lying, therefore we couldn't go back to England and they seemed to be playing games with us'.*

Isolation and interrogations – Asif

216. Asif says in relation to the isolation and treatment experienced following the recovery of the Bin Laden video, that ***'in about March/April 2003 I was at Camp Delta. I was taken one day to interrogation and asked to perform a polygraph test. During that test I was asked questions such as had I trained in Afghanistan? Had I handled chemicals, bombs, explosives? Am I a member of Al-Qaeda? They asked the same questions on a number of occasions and I answered each question truthfully, most of the answers were 'yes' or 'no'. Immediately after the test the man who conducted the polygraph said I had failed but he would send it away for tests.***

217. ***I'd been at the doctors one day and when I returned I found that I had been moved to a different block and relegated to Level 4. Level 4 was the lowest tier. It meant that you had all your comfort items removed, ie you had no soap, toothpaste, cup, towels or blanket. You only had your clothes and had to sleep on the bare metal. You had to drink water with your hands. I had been on Level 4 on a couple of occasions before. I was left there for two weeks without any explanation and then I was taken to the isolation block. I had previously been in isolation as punishment.***

218. ***When I had been in isolation before, you would be left for maybe three or four days and the guards would have to write a sworn statement, although there was no adjudication or anything, but you were then put in isolation.***

There seemed to be two reasons why you would be placed in isolation:

- 1) for punishment and you would be informed of the reason and told that you would be spending, e.g. three days in isolation for that reason;***
- 2) the other would be for interrogation where there was no specific time limit.***

219. ***After I had been on Level 4 for about two weeks I was then taken to isolation on the instructions of intelligence officers. Shafiq has already***

described the conditions in Isolation. I was taken to the November block and found myself placed in a cell opposite Rhuheh. He had been brought to the block about the same time as me. I could see him through the glass panel and tried talking to him but soldiers became aware of this and after a couple of days I was moved to a cell further along the corridor. This cell had been occupied by a guy who had developed severe mental health problems and had smeared excrement everywhere. It was absolutely disgusting. I had no soap or anything and I was left in this cell. I could not sit anywhere. It stank. It was extremely hot. Finally different soldiers came on the night shift and they gave me some cleaning material and I scrubbed the whole place down.

220. *After about a week I was taken to interrogation. I was taken there by guards from 9/4. These were the Rhode Island, Massachusetts Soldiers. They had a reputation for the worst violence. I remember once General Miller had to investigate them for using excessive force as they had beaten up one man who ended up as a cabbage.*

221. *I was taken to "Res" ie Reservation, and brought into a carpeted room with swivel chairs. I was placed on a seat and long shackled and met somebody called Mr Smith. He had magazines on the table, drinks, nuts, cigarettes, crisps. I asked him why I was in isolation and he told me because I was being influenced by other detainees. He said he had some photographs he wanted me to look at. I told him that I wouldn't look at them. I was then led away. I wasn't given any of the treats that were on the table.*

222. *After about a week I was called back to another room. On this occasion I had been having my shower, my hair was still wet, and I was taken to this other room and placed in the short shackle position. This had not happened to me before and it was extremely uncomfortable. I was then left in this room and they turned the air conditioner down to 40° Fahrenheit (there was a sign on the conditioning unit which said it should not be put below 70°). I was then left in this room in the short shackle position for about three hours. I was absolutely freezing, particularly also because my hair had still been wet from*

the shower. Then Mr Smith came into the room and said "it's nice and cold in here". He asked me if I was going to look at the photographs. He said "I can get you anything you want". He was sitting at a desk while I was in the short shackle position. He then pulled out some pornographic magazines. He showed me a photograph and said "look, you're going to see pussy again". At that I started laughing as the whole thing seemed so ridiculous. Then I swore at him and he walked out. I told him I wouldn't talk. He left me in that room for another three or four hour. I was absolutely shaking and shivering with the cold and when I was finally returned to my cell I came down with the flu. That day I had been short shackled for seven or eight hours. One of the military police told me that intelligence had said I wasn't allowed any medication.

223. *The next day I was escorted by a Marine Captain and about 15 soldiers to Oscar block. This was also isolation. I was left in a cell there for a couple of days and then taken to interrogation. I was suffering from a temperature and felt very ill.*

224. *This time I was short shackled again. A different interrogator who I came to know by the name of James, came in to question me. I had been left in the short shackle position for about three or four hours. It was agony because I had back problems, I was calling out in agony. James came in and said "who has authorised this?" He apologised to me and I was unshackled.*

225. *He said to me "I am the new interrogator and I will see you in a couple of day's time." We then just chatted before I was returned to the cell.*

226. *After three days I was taken to "the Brown building". I was long shackled and sat in a chair. I was left in a room and strobe lighting was put on and very loud music. It was a dance version of Eminem played repeatedly again and again. I was left in the room with the strobe lighting and loud music for about an hour before I was taken back to my cell. Nobody questioned me.*

227. *The next day I was taken back to the interrogation and this time I was short shackled and left for maybe five or six hours before returning to the cell. Again, nobody came to question me. That night I asked to see James in Reservation. He denied he knew anything about the short shackling. I told him I would co-operate. I was asked a series of questions about the photographs. He told me that the photographs were with Bin Laden. I just answered all his questions as honestly as I could. He said to me you are not being consistent. I was next taken to interrogation with a man I came to know as Drew. He was in the Criminal Intelligence Department. There were some other men present as well. He showed me photographs but I refused to look at them. They then left the room and I was short shackled for maybe about four or five hours. They came back. By that time I couldn't bear it any longer and I just said "it's me in the photograph". I didn't even look at the photographs. I was returned to my cell.*

228. *About four days later I was taken to be interviewed by FBI. They asked me questions about what I had been doing during 2000. I gave them full details. They said that they were going to check out my story for the relevant period.*

229. *I was then back in the isolation cell. I was brought to 'Res' at some stage and chatted with somebody from the FBI. He was trying to be friendly. He brought me magazines and I asked if there was any news. He brought some articles he had taken from the internet and read some extracts of news about myself. He said "I really like talking to you but I need some information". He said "I need some help from you, there are some evil people here, I need some information". He was obviously trying to get me to spy for him. I said I can't speak Arabic and I'm not here to spy on people. He left me in the room for maybe 12 hours long shackled. I was not given anything to eat and eventually I was just taken back to my cell.*

230. *During the period that I was in isolation and being interrogated by James, on one occasion I saw a Military Intelligence officer called OJ who asked me "have you ever been to New York?" I asked him what sort of question was*

that. He threatened to beat me up. He said "I am not like the other interrogators; if I want I'll beat you up". He was a very large guy, quite intimidating. He said to me "just answer the questions". I later found out that this man was in charge of Feroz Abbasi's case. I think his first name is Oscar.

231. *I remained in isolation for a further two or three months but I was not really interrogated again, or at least not seriously, after I had admitted to being present in the photographs. Perhaps after about a month Rhuheel was moved into the cell in front of me and we were allowed to talk and call to each other. I think after I'd made the admissions they wanted they weren't really interested in me.*

232. *The conditions in isolation were very hard. The cells were made of metal. They were extremely hot. The air conditioning was broken and hot air would come out. Sometimes the soldiers would put it on really hot. You had to sleep on a metal bunk. In the first few weeks I was given nothing, not a mattress or a blanket and I was denied all comfort items. I couldn't talk to anyone. The only thing I was given was my Koran. I sort of learned a way of dealing with it and tried not to let the isolation bother me. It was impossible to know what time it was. In fact throughout this time (in fact throughout the time that I was in Guantanamo) I had no concept of the time or date. We were not allowed to know what day it was and nobody was allowed to wear watches. The guards were told not to let us see their watches (though sometimes they forgot). They certainly never told us what time it was. They stopped doing the call for prayers after about a year. (In the first year it was on sometimes and not others.) It stopped after General Miller came.*

Isolation (Asif continued)

233. *“Amongst the effects of isolation was that over a period of time it was certainly draining. You would get worn out from it. If you were already depressed it makes you more depressed because you keep thinking repetitively about the same thing and there’s no one there to comfort you or distract you. Sometimes you welcome interrogation when you’ve been in isolation because there is someone to talk to and it’s a release and no doubt that’s what interrogators are counting on when they keep you there. The isolation blocks were it seemed to us, deliberately kept in as depressing a state as possible. The other blocks, they had to redo from time to time because the salt from the sea air corroded everything. With the isolation blocks it was all peeling paint and everything rusting. Even though things were modified or renovated, it wasn’t painted. (While we were in Guantanamo in fact there were three renovations, showing the rate at which structures would deteriorate there.)*

234. *After about three months in isolation we were all brought out and moved to Kilo block. This was a normal block that was also run by Intel as opposed to the Army. The three of us were placed in this block and we were no longer in isolation, we were allowed to talk to each other.*

235. *I was taken to interrogation and asked to do a voice stress analyzer. This is apparently another way of testing whether you are telling lies. A microphone was attached to my throat and I was asked a series of questions including “are you in the photos”. I said “No”. “Have you ever met Osama Bin Laden”. I said “No”. I was told that I had failed on these two questions. He asked me the same questions again and I answered “Yes” and he said I was telling the truth.*

236. *During one of the sessions after this when I was being questioned by James and he was asking about my movements in the UK, I said “I can’t wait*

until I go to the tribunal because I want to make you guys look stupid". He said "what do you mean?" I told him that during the relevant period that I was supposed to be in the photograph with Osama Bin Laden, I had been in trouble with the police in England. I said I could get ten policemen who could be witnesses, if necessary. I told him that I had court records. I had a solid alibi which they wouldn't have been able to deny.

237. *About four days later I was brought back and somebody read to me a letter which came from Britain. The letter basically proved that I was in England at the relevant time, although it said at the end that you should take into account that he may have traveled on a forged passport.*

238. *During the last six weeks or so of my time on Guantanamo Bay I remained in Kilo block and they started to treat me a lot better. Myself, Shafiq and Rhuhel would be taken to a place known as "the love shack" in the Brown building. This would be every Sunday where we would get to watch DVDs, eat McDonalds, eat Pizza Hut and basically chill out. We were not shackled in this area. The first three times or so Romo was present and then we were handed over to FBI, a woman called Lesley and she was the one that really treated us well and gave us treats and food. We had no idea why they were being like that to us. The rest of the week we were back in the cages as usual, but it was nice to have that period. I think we were the only three that were treated in this way. On one occasion Lesley brought Pringles, ice cream and chocolates, this was the final Sunday before we came back to England. Lesley told us that we would be leaving next week to go back to England.*

239. *About 5 days before we were due to return the five of us, me, Shafiq and Rhuhel and two other Brits, Jamal and Tarek were all taken to isolation to be kept apart from the other detainees. We weren't denied our comforts apart from Tarek who was on Level 4.*

Isolation and Treatment – Rhuheel

240. In relation to the treatment and isolation experienced following the 'discovery' of the Bin Laden video, Rhuheel says that ***'I was in my cage in a separate block to the others and an interrogator called Sarah took me to interrogation. I was in interrogation for about 8 hours. She went through my whole story again. Then she says I will assess your paperwork as this was part of a tier three interview, meaning if I passed I would move to the next stage. She also recorded my voice at that time. At the end of the interview she asked what I wore in Afghanistan. I said I took an Adidas tracksuit. She then pulled out a photo which looked like a still from a video and there was someone circled in it. She said who's this? It was someone in an Adidas top but it was not me. She said 'you are lying the person in the picture is you.' She pointed to another man next to the guy in the Adidas top and said this is your friend Asif. This went on for another 2 hours. By now I had been in interrogation for 11 hours. I was then taken back to my cage. The next day I was transferred to isolation. I remained there for three months.'***

241. ***I was interviewed every 3 or 4 days. The routine would be I was taken, short shackled and the air conditioner would be turned up to make the room freezing. The longest time I was short shackled was for about 6 or 7 hours. After about one month I was seen by someone we called 'Steve Smith'. He used to be my previous interrogator before Sarah. He pulled out photos from the video and said I had been lying to him. He said 'we know it's you – admit it!'. I said it's not me and kept insisting on this. He kept me there for 7 hours. Then I was not interrogated for ages until I saw James. He had a reputation as a torturer. His office was the Brown building. He took me in and showed me the photos again and insisted that I was in them. I was taken back to my cell, but then a few days later we were all three moved to an Intel block. A week after the move I did a stress analyzer test. He told me I had failed and that I was lying. He then showed me the date of the photos which was '1.8.2000'. I did not know whether this was the American dating system which would make***

it 8th January 2000 or the English system which would make it 1 August 2000. On both dates I was England and I told him to get my police, community service and probation records. He said he would check with MI5 who would look into it. Despite this on other occasions, after I had left isolation I would be taken to interrogation, short shackled and left in a room with very loud heavy metal music and sometimes Eminem. This would usually last for 4 or 5 hours. The interrogator would never come. After about three weeks I saw James and asked him about this but he denied it saying it was nothing to do with him. He then told us he would transfer us to Romo and the Navy Intel guy. Before I saw Romo, I saw Lucy and Alex from MI5 who asked about where I was at the time of the photos. I believe they had the photos with them and were just confirming things. The next day I saw Martin from the Foreign Office who just asked how I was. He showed me two letters but I never received them. After this we were dealt with by Romo and I was not short shackled after that point. He was trying to be nice and took all three of us to watch a movie. At my next interrogation with him he pulled out the photos and said 'admit it is you, be a man about it'. I got pissed off and said "yeah it's me. What are you going to do about it?" He said "it doesn't matter if it is you, just admit it." About a week after this I had my polygraph test.

242. *I went into the room and there were two women from the FBI. I took about 4 tests and the woman says you failed all four and then said admit it is you. I said if you think it is me then it's me. She took me to another room and left me in the cold without food for hours. She then took me back into the original room but this time I wouldn't talk to her. She got her colleague, a male, to come and talk to me but we ended up arguing and swearing at each other. He then calmed down but said he would send me to isolation. I told him, I did not care. I told him Romo had already said the whole thing had been a big mistake and the Army had 'fucked up'. I think he contacted Romo whilst I was still in the room. That's why instead of sending me to isolation he sent me back to the block with Asif and Shafiq. A few weeks later I got a new interrogator called Leslie. She was an FBI agent.*

243. *She hardly ever interviewed me and she eventually said that we would probably be going home. She arranged for us to see movies on Sunday. This was because they knew they had messed us about and tortured us for two and half years and they hoped we would forget it.*

244. *Before we left five of us British detainees were taken to isolation.*

Returning to England (Asif)

245. In relation to their return to the UK Asif says, ***‘on Sunday 7th March I was taken to see the Red Cross in Juliet building. This was just a formality for them to check how I was before returning back to England. After that I was taken to see some military officials who asked me to sign a piece of paper. I don’t remember exactly what the piece of paper said but it was along the lines that I was a member of the Taliban and Al-Qaeda, however I have since changed. In other words I had changed my mind since I was detained at Guantanamo Bay. It went on to say that if I was suspected of anything at any time by the United States, I could be picked up and returned to Guantanamo Bay. Whilst I was shown this piece of paper I was also being photographed and filmed on video camera. I said that I would not sign it. An officer said to me if you don’t sign it you’re not going home. I didn’t really believe him’.***

246. The men had known from at least four weeks earlier, having heard from the military police and others that it was all over and that they would be returning to England fairly soon. All three say this was the main reason they were not intimidated by the demands to sign the document described by Asif. Asif goes on to say that ***‘I was brought back from my cell a few hours later and this time I sat down and again more photographs were taken and film was taken and again this same document was read to me and I was asked to sign. I refused again. The woman who was dealing with me at that point asked if I agreed with the statement and I said no’.***

247. One morning all five British detainees scheduled for return were taken from their cells. Asif explains that they were to be taken for interrogation. They initially refused to go or be shackled. As Asif explains ***‘I was told that I had to have my beard shaved off and if I refused they would use force, in other words they would get the ERF team. When I refused the sergeant in charge said that I would definitely “get ERFed”. I said “we’ll see”. However the captain in charge came in and said they are going home anyway so what’s the point of shaving their***

beards off. Despite this some of the Army personnel working in the block were telling us that we weren't going home that we were going to spend the rest of our lives in prison'.

248. That evening all five detainees were (separately) brought before the British Embassy representative, Martin, and a police officer from the UK who read through a document saying that he had a right to handcuff them and to use reasonable force to move them. They were then each told that they would be returning to the UK the next day.

249. The next day they were collected and transported to a plane that was waiting for them. Despite protests from the Americans they were not hand cuffed and they were flown back to the UK where they were arrested

Contact with the outside world

250. Shafiq says, ***'When we were in Afghanistan and captured, first by the Northern Alliance and then the Americans, we did not have any contact with our families or anyone in England. We were not allowed to write and we did not receive any correspondence. When we first arrived in Guantanamo Bay on the first day after the shackles were removed after the horrendous journey, we were told to write a letter. All I remember writing was that I was in American custody. I could hardly write because my hands were so numb from having been restrained in tight shackles for such a long period of time and when I was asked to write my hands were still cuffed together. I don't know whether those letters were ever sent.'***

251. ***About two weeks after we had first arrived and were in Camp X-Ray the Army came round with a piece of paper for each of us so that we could write home to our family. I wrote home at that time. I didn't hear anything from home until around about the end of February 2002 when MI5 came to see us. This was the second occasion when they came and they produced letters from home. I was given a letter from my brother. I think he had received my letter. After that we might get a letter perhaps once every two to three months. We continued to write letters until around about August 2003 when suddenly they stopped giving us any letters they may have received from home. For about 6 or 7 months I had no communication at all from my family'***. Nor, all three men discovered later, had their families received any communications from them for a similar time.

Legal advice

252. Shafiq states that the question of their legal rights was very much on all the detainees' minds. He goes on to say, ***'we were never given access to legal advice. I asked at various points but they just said that this is not America this is Cuba and you have no rights here. Around about August 2003 I spoke to a guard who told me that he'd seen my name on the internet and that I was represented by a lawyer, Gareth Peirce in England. I never heard anything at all from the interrogators, the Embassy or the Red Cross about the fact that a case was being brought on my behalf through the US courts and was on its way to the US Supreme Court. I only found out about that when I got back to England. When we asked the interrogators and the Embassy and MI5 more about what the guard had said about a legal case they said they knew nothing.'***
253. They were intended to be kept without hope and starved of information. Asif says that in about January or February 2004 he had a conversation with a military guard who told him that he was going to go home. He goes on to say that ***'the guard who was moving me (I was shackled and being brought to Reservation) said "It's true, you've probably heard it loads of times before, but this time it's true". He told me that the US can't fight my case, they will lose, and it will cost them too much money so they are going to send me home anyway.***
254. ***The guards never spoke to us when we were on the block but individual guards on rare occasions passed on information when they were escorting us.***
255. ***About three or four weeks before we left, perhaps around the end of February 2004, we saw the Red Cross and they said to us that "something's happening, but they are not sure exactly what" and they can't tell us until it's confirmed. Then a week later they told us that Jack Straw had made a speech in which he'd mentioned the five of our names and that we would be released'.***

Red Cross

256. The International Red Cross used to visit the detainees from time to time to inspect the camps and the conditions they were being held in. The men would see them wandering around the blocks and occasionally they would call to see detainees. Shafiq says that '***the guards would bring us one by one to see them. We complained about the conditions and the Red Cross said that the Army were not following all the guidelines. They were concerned about whether or not complaints should be made or the matter taken to court because it would mean that individuals would be completely cut off from contact with the family as the Red Cross was the only means for contact.***'

Embassy visits

257. The officials from the British Embassy would always come together with officers from MI5. All three believe they saw somebody from the Embassy on about six separate occasions. They would ask if they had any problems but all three men got the impression that the officials didn't seem interested at all. Only Asif reports that on one occasion an official wrote down his list of complaints but the only changes came about as a result of the hunger strike by the prisoners themselves. Shafiq says that on one occasion the Foreign Office was due to come but he was told their plane hadn't got to the island. When they came the next day it seems they'd come with the MI5 officer who had arrived to interrogate them. When Shafiq asked the Foreign Office official what was going on he said ask MI5. When he asked MI5 they said ask the Foreign Office. The Foreign Office official asked him questions about his welfare. Nobody explained why he was there. Asif also reports that on more than one occasion the British Embassy officials acted as a third interrogator asking questions that had nothing to do with their welfare but were of interest to the interrogators. None of the men felt they could trust or rely upon the Embassy officials.

258. Shafiq believes he was interrogated by British personnel on about 6 or 7 occasions. Despite asking on many occasions he was never allowed access to lawyers. They were allowed to write home but they believe most of the letters were never sent out and they received few from their families. When they flew back to London, the Foreign Office man whom they knew as 'Martin' was present on the flight. He told them to '***make sure you say you were treated properly***'.

259. All three men believe that the Foreign Office and MI5 were always in total co-operation with the Americans. When they asked about going home, the Americans would say "***when the British want you home you can go home***". But the British would say "***we can't do anything because you are in US custody***". When any of them complained about the treatment in Guantanamo Bay, about the food and

general conditions, the Foreign Office would always say there is nothing we can do. They seemed to try and make a joke of it.

260. Shafiq also adds, '*I would mention other problems. These included the lack of any proper medical treatment, for example with my knees and my back pain. We suffered sleep deprivation and did not get enough food. The water was undrinkable and they disrespected our religion and the Koran. I raised all these with the Embassy officials, sometimes they made brief notes, but didn't really comment on them and nothing changed. We asked about legal representation but on each occasion they would just say 'we don't know about that'. My impression was that they were told by the American authorities that they could not tell us anything. I also thought it was fairly certain that they had been briefed on everything that was going on, our treatment, conditions of detention, what came up in the various interrogations as well as our behaviour since they last visited. I am sure that they were aware of the abuses for example the short shackling. They certainly knew that we were in isolation for three months*'.

MI5

261. ***“From approximately July 2002 MI5 officers interrogated us without American interrogators or guards present in the room. We were in exactly the same physical circumstances of interrogation as when the Americans interrogated us, sitting on a plastic chair shackled to the floor. We complained to MI5 as well as the Foreign Office about all the things that were being done to us in Guantanamo Bay. You couldn’t tell the difference between the MI5 and the Foreign Office. Neither was interested in us other than to get information we didn’t have. The last three interrogations Asif did not talk to them at all. When we saw the Foreign Office we were chained in exactly the same way as when we were being interrogated.”***

262. ***“Both MI5 and the Foreign Office wrote down on different occasions long lists of all of our complaints. We all made complaints. We understand that claims are now being made that we did not make complaints of at least some of the things that happened to us. We complained about everything that was being done to us and notes were made. We cannot believe how it can now be being said that we did not complain. After the guards had told us that they had seen on the news that we had a case happening on the outside we asked the Foreign Office and MI5 and our American interrogators about it and they all said they knew nothing. They didn’t bring us news.”***

263. ***“Primarily MI5 were interested in getting from us information about people in England and the British detainees who were in Cuba but we didn’t have any to give them. They also wanted us to get information out of other British detainees.”***

Re British interrogators

264. ***“We know that the British asked questions not just of British detainees but certainly of French, Belgian, Danish, Swedish, Bosnian, Algerian and some Arabs, Libyans, anyone they thought had either been in Britain or had information about people in Britain.”***

Suicides

265. While they were in Guantanamo Bay a large number of people tried to commit suicide. In addition, of those a number tried to commit suicide repeatedly. The attempts undoubtedly go into several hundred altogether, at least. (Asif recollects the first instance of which he was aware was in Camp X-Ray. The first time Asif saw it was during the day time. ***“Someone from Saudi Arabia just suddenly made a noose and hanged himself in front of me. I and everyone else shouted and in fact the guards came and he did not die.”***)

266. ***“We were told by soldiers what happened to one detainee where we were not present. Someone called Michal from Saudi Arabia who we understand hung himself. His oxygen was cut off and he passed out. The guards took him down but then beat him up and now he is basically a cabbage. He is apparently slowly recovering. For a while someone had to feed him but we understood now he can eat by himself. We understand that he was in intensive care for over a year. He never went back to the block again. As well as being in intensive care he is apparently shackled to the bed by hand and foot. The guards told us and Rhuhel saw him when he was in hospital seeing a dentist. (This happened shortly prior to coming home – four days before because we were coming home and they wanted to show we were being treated decently. Rhuhel had been in pain for over a year and had been asking to see a dentist for over a year.)”***

when the detainees were released they would go home and then come back to America and kill them. There were some who thought that they shouldn't cover their names and their attitude was 'why should we?' but they were ordered to."

Shafiq – medical problems/injuries

276. In relation to the medical facilities at the camp Shafiq adds that ***‘whilst I was in Kandahar I started experiencing some problems with my knees. These became a lot worse when I arrived at Camp X-Ray. I think the problem was aggravated a lot by the position I was made to sit in for so long on the plane journey. Throughout the time I was at Guantanamo and still today I have quite a lot of pain in my knees. I experience pain when I’m walking or when I kneel to pray. When I was at Guantanamo I asked for medical treatment. Often when you asked a corps man for a doctor no-one would come. Occasionally when a doctor was doing a round I would see him and explain my problems. Sometimes the doctor would give me some painkillers. I was always given them when I hadn’t had anything to eat so the tablets caused severe stomach ache as the pain killers were obviously really strong.***

277. ***I also had similar problems with my back. That seemed to start from when I was in Camp Delta sleeping on metal bunks and when I was made to squat, or sit, in really awkward positions. It was made much worse by the short shackling. I still have back pain in my lower back. I have been to my GP who can see there is a problem and has given me some medication.***

278. ***The other injuries I have were from when I was handcuffed in Kandahar and when I was on the plane. I got very bad cuts on my ankles and wrists from the tightness of the cuffs. When we were taken off the plane they were pushing us about and kicking us so I sustained bruising’.***

Rhuhel – medical problems/injuries

279. Rhuhel in particular has suffered irreversible damage to his eyes. He suffers from a condition where the cornea of his eye is misshaping (into a shape like a rugby ball). The condition is controllable by a gas permeable contact lens which is what he had before he was detained. Throughout the time he was at Guantanamo he was urgently asking for lenses and the solution to go with them. His family wrote to him that they had sent lenses for him. No one ever told him they had come. There was some contact between the American authorities and Rhuhel's specialist in England but still no lenses were ever provided. Every time he asked his interrogators they would say ***"it's not a holiday camp"***. About a week before he left some more lenses were produced but again with no correct solution. Since he has seen his specialist and he has had it confirmed what he was of course aware of himself, that his eyesight has drastically deteriorated as a result of the lack of any medical attention at all. Rhuhel and Asif are also suffering from pain in their knees and lower back pain for the same reasons as explained by Shafiq.

Military personnel

280. One unit of guards came from Puerto Rican Infantry. They treated the detainees like human beings. They were noticeably pleasanter than other units that were based there. ***“They did their job professionally, ie treating us like human beings. They were taken off duty. They told us that they were in trouble because they were treating us well. They told us that they knew what was right and what was wrong but that they got into trouble for doing what was right. They were blamed, we understood, for all the problems in the camp. To our knowledge it was not they who made problems. There were two units of Puerto Ricans. We are aware that the first unit got sent to Iraq and the second unit we believe also after it returned to America got sent to Iraq. The second group of Puerto Rican soldiers was in fact split up into different units so that they didn’t work as one unit. There was also a unit from the Virgin Islands who were treated in a similar way. It was very clear to us that there was discrimination and racism. The soldiers themselves used to tell us about the racism and the discrimination they suffered.”***

The state of some other prisoners

281. A few prisoners only are mentioned here.

1. Jamil el-Banna and Bisher al-Rawi

282. Asif says he was in Mike block in Camp Delta next to Suwad Al Madini (a Saudi national whose wife is British and whose children are British, also known as Shakir ...). He recollects, ***“A large number of the men were brought into the block from isolation. I believe they came in February 2003 having spent a month in isolation in Guantanamo Bay after they arrived. Abu Ennis, Jamil el-Banna, was put in the cell next to me. Given that he had been in isolation for a month and before that in Bagram Airbase (and before that I understood in Gambia), he was still coping but quite soon after he began to deteriorate. I didn’t talk to him much about the Gambia but knew he’d gone there to set up a business. He said that Bagram was very rough. When he arrived at Guantanamo he had very little facial or head hair which he said had all been shaved off in Bagram Airbase. He said that he had been forced to walk around naked, coming and going from the showers, having to parade past American soldiers or guards including women who would laugh at everyone who was put in the same position. When he arrived at Guantanamo his English was not good and still is not good. Bisher al-Rawi was placed on the same row of cells and he used to translate for him. El-Banna was in constant pain from his joints because he suffered from rheumatism and he was diabetic. He told them repeatedly that he was diabetic and they would not believe him.”***

283. ***“They used to come and take his blood and say that there was nothing wrong with him. Bisher al-Rawi also told them that el-Banna was not well. When you come new they come and take your blood.”*** (Shafiq recollects that they were told by the guards and by the medical officers who were military, that costs were being cut in respect of food and medicine. They said that the cost of the military personnel was going up and that meant that they had to cut costs in other ways which included food for the prisoners and medical care for the prisoners.

284. ***“It was very noticeable by the time we left that the quality of food and the amount of food had gone down. The food had been particularly bad at the beginning. It had improved slightly during the time we were there, but used to noticeably improve just before there was a visit from the Foreign Office.”***
285. (During the first Ramadan Asif recollects they were fasting, obviously. However they would only be provided with two meals a day and those were drastically reduced amounts like four teaspoonfuls of rice. ***“We were under the firm impression during the first Ramadan that it was part of a policy to stop us fasting and to cause us to abandon our religious practices. When Ramadan finished the food went back up to normal levels and therefore it was very obvious that it was designed to put pressure on us to stop fasting, which also the doctors and the guards were telling us to stop. The guards served us the food who had been told (they told us this) that they were under orders to give us that much food from their superior officers. When we asked after Ramadan why we were back to normal sized rations we were told that the General had ordered that now.”***)
286. ***“It was very clear that el-Banna was devoted to his family. He had photographs of his children including his new daughter. These had come in through the Red Cross. I can recollect one day when the interrogator came to visit him in the block. When she visited him in the block he showed her the pictures of his children and started crying and she said to him we’re trying to get you out of here (this was an American interrogator), we know you’re an innocent man. I could see as the months went by,”*** says Asif, ***“that he was worrying more and more and that this was having an effect on his mental health. He constantly talked about his children and who would look after them.”*** (Asif and Shafiq both comment that the repeated questions for Jamil el-Banna whom they questioned less than they questioned Bisher al-Rawi, concerned Abu Qatada and where he was. In the light of the fact that Abu Qatada is known to have been arrested in England in late 2002, it seems extraordinary that this was a question that the Americans were asking.)

287. Shafiq says that to his knowledge during the time that el-Banna was in Guantanamo he lost about 40 kilos in weight. He started off as someone quite bulky and became someone very, very thin. Asif is aware that el-Banna found it almost impossible to eat the food that was provided. What was provided was a meal packet. ***“ The meal packets were what we could eat. We were told they cost \$7 each and consisted of a main meal, pasta and Alfredo sauce, pasta and vegetables in tomato sauce, black bean burrito, cheese tortellini. The soldiers said that they were inedible, that they wouldn’t eat them, but to us they were much much better than what we had before. There were more calories in them and they were more filling. They weren’t nice but we felt fuller. Some of these packages were marked to show they were over 12 years old. But then they stopped them around July 2003 and we were told by the guards that they cost too much. (However, a brand new cafeteria was built for the guards. At that point we were told that they had ice cream added to their menu.) el-Banna could manage to eat the packaged meals (called MRE), but he couldn’t eat anything else. When they stopped giving those el-Banna couldn’t manage to eat anything else. He told the doctors but the General said no one could have these prepackaged meals anymore and he couldn’t eat what was on offer. We’re completely sure that for the three weeks before we left he wasn’t able to eat at all. Eventually we are aware that they put Bisher al-Rawi next to him (they had been separated) to try to keep him going mentally and physically. We would say that mentally basically he’s finished. The last thing we heard about him this year before we came back to England was that when he went to interrogation they told him that he was going to be sent back to Jordan and he was extremely scared of that prospect. We knew that he’d been living in England for about ten years and was a refugee and that his whole life was in England and his wife and children. They were clearly the centre of his whole existence and all he ever really thought about. The prospect of being sent to Jordan meant to him the end of his life. He knew that he would be tortured or killed there.”***

2. Re Bisher al-Rawi

288. Asif and Shafiq both remember that he was taken for a lie detector test about two weeks after he arrived from isolation in Guantanamo Bay (about six weeks after he got to Cuba), and was told that he'd passed it. He was put up to Level 1, the highest level (when Shafiq was there) but then ***"for reasons we don't know and after he'd passed his lie detector test we suddenly heard that he was in isolation and the 'privileges' that he'd been given like magazines were taken away as was everything else. We asked him later on when we saw him why he'd been put in isolation and he had no idea. They kept saying to him that he knew more than he was saying."***
289. ***Bisher al-Rawi had an armband on saying 'Iraq' and Jamil el-Banna had an armband on saying 'Jordan', even though both of them lived in England.***
290. ***When Bisher was put in isolation they shaved his head and beard. We know that Bisher was interrogated probably more than 50 times (unlike el-Banna who was probably not interrogated more than about five times). We don't know the exact reasons why Bisher al-Rawi's hair and beard were shaved off but we know that what used to happen to others would be that if you said you didn't want to go to interrogation you would be forcibly taken out of the cell by the ERF team. You would be pepper-sprayed in the face which would knock you to the floor as you couldn't breathe or see and your eyes would be subject to burning pain. Five of them would come in with a shield and smack you and knock you down and jump on you, hold you down and put the chains on you. And then you would be taken outside where there would already be a person with clippers who would forcibly shave your hair and beard. Interrogators gave the order for that to be done; the only way in which this would be triggered would be if you were in some way resisting interrogation, in some way showing that you didn't want to be interrogated. Or if during interrogation you were non-cooperative then it could happen as well.***
291. ***(It was our view that they were looking for vulnerabilities all the time and that the people who seemed most comfortable having a beard or most used to***

it, those were the ones that they would shave it off. We think with the three of us that they thought we would not be so affected if it happened to us. They would watch how you wash, how you eat, how you pray and the guards would talk to you and perhaps because we sounded more like the guards themselves and western that they did not think that we had those same vulnerabilities. They undoubtedly thought we had vulnerabilities, but different ones such as liking to talk to people, not liking to be alone, etc., and those were the ones they focused on with us.)

292. *According to Bisher they seemed obsessed with what he was doing in Gambia and who sent him there and where he got the money from to go and to finance their business project. They were still asking him about a battery charger that he had in his possession in his baggage on the plane. The Americans were asking him about that.*

3. Moazzam Begg

293. *Moazzam Begg we never saw. We only heard about him, particularly from Saad Al Madini, who was a Pakistani brought up in Saudi Arabia. He had been in Bagram Airbase with Moazzam Begg and he had himself been taken from Bagram Airbase. He had been we think handed over by Indonesia to the Americans, kept in Bagram Airbase, taken from Bagram Airbase to Egypt where he had been tortured and then taken back to Bagram and then to Guantanamo.*

294. *While we never saw Moazzam Begg, we did talk to guards who had had contact with him and they told us that he had been in isolation all the time he was there and had only seen them and no one else. Four guards told us that he was in a very bad way. In addition, he was in Bagram for a year and no one that we know of had ever been there for a year and must be in a worse state coming out of it. People coming from there used to tell us that there was a British guy imprisoned there and that must have been Moazzam Begg.*

295. *We don't know but have the impression that he may have had 'admissions' forced out of him at Bagram which he did not want to continue when he got to Guantanamo Bay and the authorities kept him in isolation to stop him being able to go back on what he may have said or to have the chance of getting any support from anyone else that might cause him to resist what they wanted. We believe that he was in isolation in Camp Delta and then in isolation in Camp Echo. The impression we have is that the point of keeping people in complete isolation in Camp Echo was so that they would in every way be under the control of the people who held them there. They would have no other information than what they were given by the guards or the interrogators and would be obliged to put all their trust in what they said and would know nothing whatsoever about what was happening in the outside world or even in Guantanamo Bay. The guards were especially picked to go to Echo. We talked to people who had come back from Camp Echo.*

4. Mamdouh Habib

296. *One was Mamdouh Habib, who was the Australian. He said that there was no natural light at all there. Even when you went to the shower, which was 'outside', it was still sealed off so you couldn't see any natural light at all. You couldn't tell what time of day or night it was. You were in a room and a guard was sitting outside watching you 24 hours a day. That was his job, just to sit outside the cell and watch you.*

297. *Habib himself was in catastrophic shape, mental and physical. As a result of his having been tortured in Egypt where he was taken from Bagram and then brought back, he used to bleed from his nose, mouth and ears when he was asleep. We would say he was about 40 years of age. He got no medical attention for this. We used to hear him ask but his interrogator said that he shouldn't have any. The medics would come and see him and then after he'd asked for medical help they would come back and say if you cooperate with your interrogators then we can do something. (Shafiq says "Habib told me this and I have also heard them say it to other detainees as well".) Asif recollects*

that *“another man who’d been taken to Egypt and tortured there, Saad Al Madini, was also refused medical assistance for the same reason. We know from Al Madini that he had had electrodes put on his knees and that something had happened to his knees and something had happened to his bladder and he had problems going to the toilet. He told us that when he was in interrogation he was told by the interrogators that if he cooperated he would be first in line for medical treatment.*

5. Omar Khadr

298. Rhuhel recollects *“the same thing also, we are aware, happened to a young Canadian man, Omar Khadr, who was aged 17 when we left. He had been shot three times at point blank range and his lung punctured and had shrapnel in one eye and a cataract in the other. They would not operate on him. He was told that was because he would not cooperate. We were told one time when he was in isolation he was on the floor very badly ill. The guards called the medics and they said they couldn’t see him because the interrogators had refused to let them. We don’t know what happened to him (he had had some sort of operation when he was still in Afghanistan but he was in constant pain in Guantanamo and still undoubtedly is and they would not give him pain killers.”* (He was one door from Rhuhel in the same block and all three used to talk to him.)

6. Mohamed Rajab

299. *One man, a Yemeni, Mohamed Rajab, was in a particularly bad state. Every two hours he would get moved from cell to cell, 24 hours a day, seven days a week, sometimes cell to cell, sometimes block to block, over a period of eight months. He was deprived of sleep because of this and he was also deprived of medical attention. He’d lost a lot of weight. We were aware that he had a painful medical problem, haemorrhoids, and that treatment was refused unless he cooperated. He said he would cooperate and had an operation. However, the operation was not performed correctly and he still had problems. He would not cooperate. We were aware that shortly before we*

came back to England he was put into Romeo block where you were stripped naked. We would see people go and come from Romeo. When they went they would go fully clothed. When they came back they would only have shorts on. They told us that they would have all their clothes taken off in the cell. The Red Cross is aware of this. If the interrogators after that thought you should be allowed clothes, then you were allowed them. This appeared to be an open-ended process depending on the interrogation and the interrogators. The people we know who went to that block were not people who caused problems or were disruptive. The whole application of these measures was entirely to do with interrogators and whether they thought they were getting out of them what they could and should get out of them. All the Bosnians were there for instance.

7. Algerian detainees kidnapped in Bosnia

300. *"By Bosnians we mean six Algerians who were unlawfully taken from Bosnia to Guantanamo Bay. They told us how they had won their Court case in Bosnia. As they walked out of Court, Americans were there and grabbed them and took them to Camp X-Ray, January 20, 2002. They arrived five days after us. They were treated particularly badly. They were moved every two hours. They were kept naked in their cells. They were taken to interrogation for hours on end. They were short shackled for sometimes days on end. They were deprived of their sleep. They never got letters, nor books, nor reading materials. The Bosnians had the same interrogators for a while as we did and so we knew the names which were the same as ours and they were given a very hard time by those. They told us that the interrogators said if they didn't cooperate that they could ensure that something would happen to their families in Algeria and in Bosnia. They had dual nationality. They had families in Bosnia as well as in Algeria.*

301. *(From what we could see interrogators used to prey on particular groups of nationality so that Europeans would have the same interrogators, North Africans would have the same, etc.). One of the methods of interrogation was*

to say that someone in Cuba had told them that we were in a particular place, for instance, the video we've described and training camps in Kandahar. When we asked who it was, they would not tell us."

302. (On one occasion Asif was told who had implicated him because he was shown the photograph of a particular detainee in Guantanamo and told that that man had implicated him and said that you were in a mosque in a training camp in Afghanistan. However, this was a detainee whom Asif knew was mentally ill. Before Asif was told this the man was placed in a cell opposite him for about five days and then taken away and it was after that that Asif was accused. ***"We could see the process by which the interrogators seemed to get excited, because they finally got some piece of 'real' evidence and simply didn't care that it had come from someone who was mentally unbalanced. One of the interrogators did also let slip that another detainee had identified us as the three who were in the video and said he'd seen us in Guantanamo Bay."*** (Shafiq recollects examples of interrogators inventing 'information' about us, about the three, and then informing other detainees of it. For example, one detainee came back after interrogation and said he'd been told that Shafiq said that he and another detainee should not be put together because they were in dispute with each other which was completely untrue. Shafiq had never said anything like that.

303. ***"We were told by one Algerian (not one of the Bosnian Algerians) that he had been taken to interrogation and been forced to stand naked. He also told us he had been forced to watch a video supposedly showing two detainees dressed in orange, one sodomising the other and was told that it would happen to him if he didn't cooperate."***

304. An issue that all three men have concerns about is the treatment of those detainees from countries with a worse human rights record than the UK. Whilst in the Chinese block Asif managed to understand from one of the other detainees that they had originally all denied they were from China. They had apparently said they were Afghani. He says that they were very rarely interviewed. Eventually the Americans told them that if they admitted where they were from they would not tell

their governments (it seems they did not know if they were Chinese or from one of the Southern republics due to their dialect). The detainees admitted to being Chinese and within one month Chinese officials arrived to interrogate them. The Chinese officials told them that the US had provided full co-operation. If they are returned to China they will all be executed. All three men report similar concerns in relation to the Russian detainees. It seems that a number of these (possibly 20) have been returned to Russia and their fate is unknown.

8. David Hicks

305. Asif says *"I first saw David Hicks in Camp X-Ray. He was a very surprising sight. A tiny white guy not more than 5'3" with a lot of tattoos on him. He told us he had endured an extremely bad experience having been held on a ship where he had been interrogated by Americans and hooded and beaten. Despite that experience, he was in better shape then that he was when we last saw him in Mike block. We thought that he had gone downhill. By downhill we mean that he seemed to be losing all hope and more willing to co-operate as a result. We were interrogated a lot but he used to get interrogated every two to three days, sometimes every day. He was told that if he didn't cooperate he would never go home. It started when he was moved to Delta, that he began to be moved all the time. They wouldn't let him settle with anyone. We met him again in Mike block after Delta and had the impression that he was being forced to make admissions, the "force" consisting of offers of benefits if he co-operated and removal of anything that could make life slightly easier if he did not. We were aware for instance that he needed essential medical treatment for a hernia and that he was told he would only get it if he cooperated. We do not know the reason for his appearance when he arrived at Mike block; he had always been proud of his hair, but when he arrived there his head hair was shaved off, although he still had a beard. We were told by some guards that he was taken to Echo after he started co-operating and that in Echo he had access to more basic comforts as a reward, although it is our understanding that he was in Camp Echo i.e. in complete isolation from the summer of 2003 onwards and we presume still there, where*

the only people he could communicate with would be interrogators. The same guards also told us that he had been taken out of Echo for another operation, but we don't know if that is correct

9. The Kuwaitis

306. *'Fouad Mahmoud Al Rabiah was a businessman, we understand, who had studied in America and graduated from Miami in aeronautical engineering. To us he sounded Scottish. He had lived in England/Scotland for approximately ten years. He was given a particularly hard time, being constantly moved around, every two hours, after General Miller came to the Camp. He took his polygraph test and passed a long time ago and was initially sent to the best section of the Camp but then brought back again after a while. He got extremely harsh treatment including short shackling. Because he was educated, we understand, wealthy, and they were determined that he had to be part of a cell. We understood that he was seized in Pakistan, basically sold by the Pakistanis and then the Americans invented accusations to try and fit. In 2004 the Kuwaiti government came and told all the Kuwaitis that they would be going home in June. When they wanted to know what would happen to them when they got home, they were told "you will find out when you get home." We could see that he was suffering from serious depression, losing weight in a substantial way and very stressed because of the constant moves, deprived of sleep and seriously worried about the consequences for his children. Every father in the camp had a huge worry about his family which added to the stress.'* Shafiq recollects when he was next to him in isolation that he was suffering from serious stomach pains and that medication was denied. He was told that he couldn't receive medication unless he cooperated.

10. Other detainees (including detainees sold to the Americans)

307. Asif describes a disturbing number of detainees who have clearly been sold. All three are convinced that there must be a paper trail which will show huge sums of money paid out by the USA for many of those now in Guantanamo. These are some examples (some of the names are familial names, as is customary).

- a) *'Two brothers from Pakistan, one is a scholar the other a reporter, reason they are there because they were having a feud with another family, the other family told some people they are al Qaeda now they are in Cuba. Both were sure that the Americans were paying money for captives.*
- b) *Numerous other people in Cuba who are from Afghanistan and Pakistan were sure they had been sold by corrupt individuals. A lot of people who were having land disputes were sold by the disputers to the Americans. These people were brought to Cuba. The Americans know they are innocent but still they are not letting them go.*
- c) *Abu Ahmed Makki, a Saudi Arabian citizen married to a Pakistani wife lived in Pakistan with his wife and was arrested in Pakistan by the Pakistan authorities. Most of his possessions were taken including his motorbike and cash. Upon his release in Pakistan by the authorities he asked for his valuables back but he was re-arrested and handed over to the Americans who took him to Cuba and he has been there for over two years. He was told he should not be there but they wanted him to spy in the camp for them. He was told once he had cooperated and helped the Americans they would release him.*
- d) *Abu Ahmad Sudani, a teacher in Pakistan who has a wife and a child in Pakistan believes he also was sold to the American forces. He was told that he would be released over a year ago but he is still in Cuba. He doesn't know when they will release him to. He wants to go to Pakistan because his wife and child are in Pakistan. His wife and child are Pakistani nationality and he is a Sudani.'*
- e) *One Afghani man, a farmer about 55 years old, is a farmer from Bamyan. He was next to Shafiq. He speaks Farsi and although in Cuba for over a year was only interrogated on two occasions; on one occasion there was no Farsi translator and he was brought back to his cage. He does not know what he has done to be in Cuba. He doesn't even know where Cuba is! He is depressed, scared and badly affected.*

11. Camp Four

308. Asif says *'numerous other detainees have been told that their interrogation has finished, they have passed numerous tests e.g. lie detector, stress analyser test. They have been taken to Camp 4 but they still have not been released.*

309. *It is called a medium security section. When we were in Guantanamo there were four blocks. One block has four bays in it. Each bay has ten or twelve people in. Instead of wearing orange they all would be wearing white. These are the detainees who are always shown on TV playing football. They don't wear chains or shackles. They are said to be people who are about to go home but they yet have been there about one year. These are examples of the hundreds of people who should never have been in Cuba in the first place. The authorities seem paralyzed. They can't send them home, they don't bother to interrogate them so they are just stuck.'*

Shafiq Rasul

Asif Iqbal

Rhuhel Ahmed

26th July 2004

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, et al.,

Petitioners,

V.

GEORGE WALKER BUSH, et al.,

Respondents.

Civil Action No: 05-2104 (RBW)

ORDER

Currently before the Court is the Petitioners' Motion for Transfer of Habeas Corpus Action of Petitioner Ali Hamza Ahmed Suliman Bahlool to Calendar Committee for Reassignment as a Related Case ("Pet. Mot."). Specifically, the petitioners note that petitioner Bahlool is scheduled for trial before a Military Commission pursuant to a November 12, 2001 Military Order. Pet. Mot. at 1. The petitioners contend that the legal and factual issues presented in Bahlool's case are identical to issues raised by the petitioner in Hamdan v. Rumsfeld, No. 04-CV-1519 (JR), which was assigned to Judge James Robertson. Id. Accordingly, petitioner Bahlool contends that this action should be transferred to Judge Robertson as a related case.

Local Rule 40.5 provides that “[c]ivil . . . cases are deemed related when the earliest is still pending on the merits in the District Court and they . . . involve common issues of fact, or . . . grow out of the same event or transaction” LcvR 40.5 (a)(3). Despite the petitioners’ contention, this case is not related to Hamdan. First, Judge Robertson and the District of Columbia Circuit have already ruled on the merits of Hamdan’s petition, and the case is now

pending before the Supreme Court. See Hamdan v. Rumsfeld, 344 F. Supp. 2d 153 (D.D.C), 415 F.3d (D.C. Cir. 2005), cert. granted, 126 S.Ct. 622 (U.S. Nov. 7, 2005 (No. 05-184)). Thus, the merits of the Hamdan case are not currently a pending on Judge Robertson's calendar.

Moreover, despite raising similar legal issues, the judges of this Court have not treated the plethora of petitions filed on behalf of detainees at Guantanamo Bay, Cuba as related cases. This case is no different simply because one of the petitioners is now scheduled for trial before a Military Commission. Accordingly, it is hereby this 19th day of December, 2005

ORDERED that the petitioners' motion is **DENIED**.

SO ORDERED.

REGGIE B. WALTON
United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, et al.,

Petitioners,

v.

GEORGE WALKER BUSH, et al.,

Respondents.

Civil Action No: 05-2104 (RBW)

ORDER

Currently before the Court are the (1) the Petitioners' Motion for the Immediate Issuance of Writs of Habeas Corpus Pursuant to 28 U.S.C. § 2243 or, Alternatively, to Issue an Order to Show Cause ("Pet. Mot."); (2) the Respondents' Motion to Stay Proceedings Pending Related Appeals and Opposition to Petitioners' Motion for the Immediate Issuance of Writs of Habeas Corpus Pursuant to 28 U.S.C. § 2243 or, Alternatively, to Issue an Order to Show Cause ("Resp. Mot."); (3) the Petitioners' Partial Consent to Respondents' Motion to Stay Proceedings and Reply to Respondents' Opposition to Motion for Writs of Habeas Corpus or Order to Show Cause ("Pet. Opp'n"); and (4) the Respondents' Reply Memorandum in Support of Motion to Stay Proceedings Pending Related Appeals and Opposition to Petitioners' Motion for the Immediate Issuance of Writs of Habeas Corpus Pursuant to 28 U.S.C. § 2243 or, Alternatively, to Issue an Order to Show Cause ("Resp. Reply"). For the reasons set forth below, the Court will deny the petitioners' motion for the immediate issuance of Writs of Habeas Corpus, and grant the respondents' motion to stay.

The respondents seek to stay the proceedings in this case, along with all other Guantanamo Bay detainee cases, pending the resolution of the appeals in In re Guantanamo Detainee Cases, 355 F. Supp. 2d 443 (D.D.C. 2005) and Khalid v. Bush and Boumediene v. Bush, 355 F. Supp. 2d 311 (D.D.C. 2005). Pet. Mot. at 9-11. Specifically, the respondents contend that “[t]he outcome of the appeals will determine how all of the Guantanamo detainee cases should proceed, if at all.” Resp. Mot. at 9. Moreover, they opine that further proceedings before this Court prior to the resolution of the appeals would require the expenditure of judicial and other resources that may be avoided as a result of the appeals, and, in any event, such proceedings very likely would have to be revisited or relitigated. Id. at 11. The petitioners consent to the stay of these proceedings subject to three limitations. Pet. Opp’n at 1. First, the petitioners seek factual returns for each detainee. Id. at 2. Second, the petitioners request basic factual information concerning each detainee, including whether he is alive and being held at Guantanamo Bay, Cuba, whether he has completed his Combatant Status Review Tribunal (“CSRT”), and if so, whether he has been designated as an Enemy Combatant, or given some other status, and his Internee Classification Number. Id. at 2. Finally, the petitioners request an order requiring the respondents “to preserve all potentially relevant documents and information concerning Petitioners and the circumstances of their capture and detention.” Id. at 3.

The Court agrees that it is apparent that resolution of the pending appeals will likely address many, if not all, of the legal issues raised in the petition in this case. In fact, the outcome of these appeals will likely determine how all of the Guantanamo detainee cases should proceed and will provide guidance to this Court on how to address the petitioners’ claims. Therefore, this Court concludes that all proceedings in this case should be stayed until final resolution of the

three cases pending before the District of Columbia Circuit, as doing so will avoid unnecessary litigation and is therefore in the interest of judicial economy.¹ The Court will now turn to the petitioners' alternative positions.

The respondents contend that "it makes no sense for the government to process and submit factual returns with respect to . . . the petitions . . . when the [District of Columbia] Circuit will be considering the proper scope of these habeas proceedings, including whether the claims can be dismissed without reference to specific factual returns." Resp. Mot. at 11-12. In addition, the respondents argue that the submission of factual returns is extremely burdensome and "risks the inadvertent disclosure of classified information." *Id.* at 12. The petitioners argue, in response, that providing factual returns would not be an unduly burdensome task because most of the information has already been compiled for the CSRTs. Pet. Opp'n at 4-5. Moreover, they note that there is no reason to fear inadvertent disclosure of classified information because counsel for the petitioners have been granted security clearance, and understand their non-disclosure obligations when reviewing classified information. *Id.* at 6.

This Court, along with other judges on this Court, have required the government to produce factual returns in cases that are otherwise stayed. *See Battayav v. Bush*, No. 05-CV-714 (RBW) (D.D.C. May 18, 2005); Resp. Mot. at 13-14. When presented with a similar issue, another member of this Court noted that "[a]lthough the Court is sensitive to the concerns of respondents, the factual returns appear necessary for petitioners' counsel effectively to represent petitioners. Indeed, even initial conversations by counsel with their clients may be very difficult

¹ Other judges of this Court, when presented with a similar petition, have ordered stays. *See* Resp. Mot. at 7-8 n.6 and cases cited therein.

without access to that basic factual information.” Al-Anazi v. Bush, 370 F. Supp. 2d 188, 199-200 (D.D.C. 2005). This Court agrees, and must conclude that the government should produce factual returns for the petitioners in this case within 120 days.²

The petitioners also request basic factual information concerning each detainee, including whether he is alive and being held at Guantanamo Bay, Cuba; whether he has completed his CSRT, and if so, whether he has been designated as an Enemy Combatant, or given some other status; and, his Internee Classification Number. Pet. Opp’n at 2. It appears that the respondents have already provided some of this information to the petitioners. Resp. Reply at 2 n.2 (noting that the two identified petitioners have been determined to be enemy combatants). Moreover, much of this factual information will be included in the factual returns that the respondents have been ordered to provide, or will be provided when the petitioners’ counsel requests to visit their clients. Resp. Mot. at 12, n.9 (“[a] factual return for a petitioner in a Guantanamo detainee cases typically has consisted of the record of proceedings before the Combatant Status Review Tribunal that confirmed petitioner’s status as an enemy combatant properly subject to detention.”); Resp. Reply at 4 n.4 (noting that the Internment Serial Number of detainees are “typically provided in connection with a request by counsel for a visit with a properly represented petitioner.”). Accordingly, the petitioners will receive all the information they have requested, and this Court can find no reason for the issuance of a separate order requiring that this information be provided.

² This order shall only apply to those petitioners who have actually been identified as detainees at Guantanamo Bay, Cuba. The parties are directed to continue to work together to determine whether the remaining petitioners are detained at Guantanamo Bay, Cuba. If the remaining petitioners are identified as detainees at Guantanamo Bay, Cuba, the respondents will have 120 days from the date of identification to submit factual returns for those individuals.

The petitioners' remaining request—entry of an order requiring the respondents to collect and preserve documents—is not properly before the Court. “A motion to preserve evidence is an injunctive remedy and should issue only upon an adequate showing that equitable relief is warranted.” Madden v. Wyeth, 2003 WL 21443404, at *1 (N.D. Tex. Apr. 16, 2003) (citing Pepsi-Cola Bottling Co. of Olean v. Cargill, Inc., 1995 WL 783610, at *3-4 (D. Minn. Oct. 20, 1995); Humble Oil & Refining Co. v. Harang, 262 F. Supp. 39, 42-43 (E.D. La. 1966)). In this case, the petitioners simply make a request to preserve documents, but fail to make any showing that the equitable relief they seek is warranted. Pet. Reply at 6. Moreover, the Court is quite certain that the respondents understand their obligation not to destroy evidence that may be relevant in pending litigation. Nonetheless, at least one other member of this Court has issued an Order requiring the preservation of “all evidence and information regarding the torture, mistreatment, and abuse of detainees now at the Guantanamo Bay detention facility.” Al-Marri v. Bush, No. 04-2035, at 1-2 (D.D.C. March 7, 2005). This order requires the preservation of all documents relating to detainee abuse, not just the retention of documents relating to the petitioners in that case, thus the respondents are already under an obligation to preserve relevant documents. Accordingly, the Court will deny this request.

Accordingly, it is hereby this 22nd day of December, 2005

ORDERED that the Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, first issued on November 8, 2004 in In re Guantanamo Detainee Cases, 344 F. Supp. 2d 174 (D.D.C. 2004), the Order Supplementing and Amending Filing Procedures Contained in November 8, 2004 Amended Protective Order, first issued on December 13, 2004 in In re Guantanamo Detainee Cases, and

the Order Addressing Designation Procedures for “Protected Information,” first issued on November 10, 2004 in In re Guantanamo Detainee Cases, shall also apply to this case. It is further

ORDERED that the respondents’ motion to stay pending resolution of all appeals in Khalid v. Bush, Boumediene v. Bush, 355 F. Supp. 2d 311 (D.D.C. 2005), appeals docketed, Nos. 05-562, 05-5063 (D.C. Cir. Mar. 2, 2005), and In re Guantanamo Detainee Cases, 355 F. Supp. 2d 443 (D.D.C. 2005), appeal on petition for interlocutory appeal, No. 05-5064 (D.C. Cir. March 10, 2005) is **GRANTED**. It is further

ORDERED that the petitioners’ motion for immediate issuance of writs of habeas corpus or, alternatively, to issue an order to show cause is **DENIED**. It is further

ORDERED that the respondents shall produce factual returns in this case within 120 days of the entry of this Order for each petitioner that has been identified as a detainee at Guantanamo Bay, Cuba. It is further

ORDERED that if the remaining petitioners are identified as detainees at Guantanamo Bay, Cuba, the respondents will have 120 days from the date of identification to submit factual returns for those petitioners. It is further

ORDERED that the petitioners’ request for factual information including: (1) whether each petitioner is alive and being held in Guantanamo Bay, Cuba; (2) whether each petitioner has completed his CSRT, and if so whether he has been designated an Enemy Combatant or has been given some other status; and (3) each Petitioners’ Internee Classification Number is **DENIED**. It is further

ORDERED that the petitioners’ request to require the respondents to collect and preserve

all documents relating to the petitioners and detainee abuse at Guantanamo Bay is **DENIED**.

SO ORDERED.

REGGIE B. WALTON
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

**PETITIONER ALI HAMZA AHMED SULIMAN BAHLOOL'S MOTION TO
STAY MILITARY COMMISSION PROCEEDINGS
AND FOR EXPEDITED BRIEFING SCHEDULE**

Petitioner Suliman Bahlool respectfully moves this Court to stay military commission proceedings that have been initiated against him by Respondents in Guantánamo Bay, Cuba until the Supreme Court has issued its decision in *Hamdan v. Rumsfeld*, 415 U.S. F.3d 33 (D.C. Cir. 2005), *cert. granted*, 74 U.S.L.W. 3108 (U.S. Nov. 7, 2005) (No. 05-184). Such a stay is necessary in order to protect Petitioner from the irreparable harm of being tried by a tribunal that lacks jurisdiction over the charges against him. Moreover, the issuing of this stay serves the interests of judicial economy and is in the public interest, as the exact, substantial issues to be resolved by the Supreme Court in *Hamdan* have been raised by Petitioner in his challenge to the legality of the military commission process.¹

Because the commencement of military commission proceedings against Bahlool is imminent, with hearings scheduled as early as January 10, 2006, Petitioner respectfully requests

¹ Pursuant to LCvR 7(m), the Parties held a telephonic conference on December 29, 2005, regarding the present motion. Counsel for Respondents indicated that they intend to oppose the same.

that the Court set an expedited briefing schedule on this matter. *See Exhibit A, Trial Term for Commissions Sessions, Week of 9 Jan 2006, Guantanamo Bay Cuba*, Email from Keith Hodges.

After subjecting Petitioner to over two years of detention without any charge against him, Respondents in February, 2004, for the first time announced charges. On June 29, 2004, those charges were referred to a military commission. Petitioner's commission was one of four originally scheduled in 2004 to serve as the first set of commissions since World War II. In December, 2004, the Appointing Authority administratively stayed Petitioner's commission because of the U.S. District Court's decision in *Hamdan*. In November, 2005, pursuant to the D.C Circuit's decision in *Hamdan*, the Appointing Authority announced that it was resuming its prosecution of the Petitioner. That commission has now required detailed military defense counsel, to be available for conferences with the presiding officer from January 9 to 12, 2006, and has scheduled an initial proceeding for January 10, 2006. Petitioner has filed with this Court and served on Respondents a Supplemental Petition for Writ of Habeas Corpus which, *inter alia*, challenges the jurisdiction of the military commission over the charges that have been brought against him, and alleges that the structural bias of the commission process and numerous procedural infirmities render it unconstitutional and in violation of international law.

Petitioner's substantive challenges to the military commission process include the identical issues to be resolved by the Supreme Court in *Hamdan*. Specifically, Petitioner has argued that (1) any trial by military commission violates the principle of separation of powers, as such commissions have not been authorized by Congress, and (2) the processes established for military commissions violate the Geneva Conventions. In *Hamdan*, the D.C. Circuit held that petitioner was entitled to pre-commission adjudication of both of these challenges. Although the D.C. Circuit ultimately resolved these challenges against Hamdan, and the Supreme Court

subsequently granted *certiorari*, it is the Circuit Court's determination of these challenges that is being reviewed, and not the conclusion that petitioner was entitled to have them heard prior to the commission process. Thus, a decision by the Supreme Court reversing the D.C. Circuit would necessarily mean that the military commission process against Petitioner Bahloul is illegitimate, and that Bahloul is entitled to have that process stopped before it begins. A stay of the commission proceedings in Bahloul's case is therefore necessary in order to prevent irreparable harm to him in the form of nullification of his right to pre-commission adjudication of his claims.

Judge Kollar-Kotelly of this Court reached this conclusion in a recent opinion on a motion by David Hicks, another Guantánamo detainee against whom military commission proceedings have been initiated. Judge Kollar-Kotelly enjoined further proceedings against Hicks "until the Supreme Court has issued a final and ultimate decision in *Hamdan*." *Hicks v. Bush*, 397 F. Supp. 2d 36 (D.D.C. November 14, 2005). The reasoning of that decision should apply with equal force to the present motion.

I. FACTUAL BACKGROUND

1. Petitioner Bahloul is a 37-year-old Yemeni citizen detained by Respondents at Guantánamo Bay. For nearly three years, he was detained by Respondents without any charges against him.
2. On October 27, 2005, following the Supreme Court's decision in *Rasul v. Bush*, 542 U.S. 466, 124 S. Ct. 2686 (2004), counsel for Petitioner filed with this Court a Petition for Writ of Habeas challenging the legality of Petitioner's ongoing detention.

3. On November 7, 2005, the United States Supreme Court granted *certiorari* in *Hamdan v. Rumsfeld*, 415 F. 3d 33 (D.C. Cir. 2005), *cert. granted*, 74 U.S.L.W. 3108 (U.S. Nov. 7, 2005) (No. 05-184). Hamdan presented two questions for review by the Supreme Court: (1) “Whether the military commission established by the President to try petitioner and others similarly situated for alleged war crimes in the ‘war on terror’ is duly authorized under Congress’s Authorization for the Use of Military Force (AUMF), Pub. L. No. 10740, 115 Stat. 224; the Uniform Code of Military Justice (UCMJ); or the inherent powers of the President?” and (2) “Whether petitioner and others similarly situated can obtain judicial enforcement from an Article III court of rights protected under the 1949 Geneva Convention in an action for a writ of habeas corpus challenging the legality of their detention by the Executive branch?” Petition for Writ of Certiorari, *Hamdan v. Rumsfeld*, 2005 WL 1874691 (August 8, 2005) (No. 05-184).
4. On December 13, 2005, after learning that Petitioner Bahlool was pending a trial before a commission, undersigned counsel for Petitioner Bahlool filed with this court a Supplemental Petition for Writ of Habeas Corpus. In the Supplemental Petition, Petitioner argues, *inter alia*, that the military commission has been illegally constituted, in violation of U.S. statutory and constitutional law and international law, that the commission lacks jurisdiction over the charges that have been brought against Bahlool, and that the procedures of the military commission violate Bahlool’s rights of equal protection and due process under U.S. and international law.

II. ARGUMENT

Injunctive relief is appropriate where, as here, (i) petitioner likely would suffer irreparable injury if this Court does not grant injunctive relief, (ii) the injunction would cause no irreparable harm to the respondents, (iii) such an injunction would serve the public interest, and (iv) petitioner's claims have a substantial likelihood of success on the merits. *See, e.g., Al Fayed v. CIA*, 254 F.3d 300, 303 (D.C. Cir. 2001); *Serono Labs. Inc. v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998). These factors are to be balanced against one another, with a recognition that all four need not be equally strong. *Serono Labs*, 158 F.3d at 1318; *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir.1995) ("If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak").

Assuming that the Court finds that a stay is appropriate in light of the four-factor, sliding scale analysis, it may, under the All Writs Act, 28 U.S.C. § 1651(a), stay the military commission proceedings pending a final decision from the Supreme Court in *Hamdan*. As the D.C. Circuit made clear in *Hamdan*, challenges to the jurisdiction of a military commission over a petitioner are properly considered by the district court *prior* to the adjudication by military commission of that petitioner. *Hamdan*, 415 F. 3d at 36-37; *accord Hicks*, 397 F. Supp. 2d at 41. The All Writs Act, which empowers the Court to issue writs "necessary or appropriate in aid of [its] jurisdiction[]," therefore provides the court with the authority to stay the commission proceedings against Petitioner, in order to preserve the Court's jurisdiction over Petitioner's substantial jurisdictional challenges to the military commission.

A. Bahlool Will be Irreparably Harmed if He is Subjected to a Military Commission Which Lacks Jurisdiction Over Him

A stay is necessary in order to protect Bahlool from irreparable harm. Irreparable harm is the keystone to injunctive relief, and the harm faced by the petitioner must be “both certain and great,” and ““of such imminence that there is a “clear and present” need for equitable relief to prevent irreparable harm.”” *Wisconsin Gas Co. v. FERC*, 758 F.2d 699, 674 (D.C. Cir. 1985) (quoting *Ashland Oil, Inc. v. FTC*, 409 F. Supp. 297, 307 (D.D.C.), *aff’d*, 548 F.2d 977 (D.C. Cir. 1976) (internal citation omitted). The injury faced by Bahlool if the military commission proceeds meets this exacting standard.

The D.C. Circuit’s decision in *Hamdan* articulates the type and magnitude of harm that Petitioner Bahlool faces if the military commission goes forward. As the Court stated, a decision by a court to overturn the judgment and conviction of a tribunal after the fact “insufficiently redresses the defendant’s right not to be tried by a tribunal that has no jurisdiction.” *Hamdan*, 415 F.3d at 36 (citing *Abney v. United States*, 431 U.S. 651, 662 (1977)). As used by the D.C. Circuit, the phrase “insufficient[] redress[]” is, at base, a statement of irreparable harm. The injury that would be done to Petitioner if the military commission proceeded against him could not be cured if the Supreme Court reversed in *Hamdan*. As Judge Kollar-Kotelly has noted, the crux of that injury is “the fact that [Petitioner] would have been tried by a tribunal without any authority to adjudicate the charges against him in the first place, potentially subjecting him to a second trial before a different tribunal.” *Hicks*, 397 F. Supp. 2d at 42.

As Judge Kollar-Kotelly suggests, the nature and magnitude of the injury that Petitioner would face is akin to that of double jeopardy. Indeed, the *Abney* case cited by the D.C. Circuit was a double jeopardy case. As the Supreme Court stated in *Abney*, “the guarantee against double jeopardy assures an individual that, among other things, he will not be forced, with

certain exceptions, to endure the personal strain, public embarrassment, and expense of a criminal trial more than once for the same offense.” *Abney*, 431 U.S. at 661. This injury—so great as to undergird a constitutional right, and to find deep precedential support in Anglo-American common law—is indisputably sufficient to support a finding of irreparable harm to Petitioner.²

Similarly, the injury faced by Petitioner Bahlool if he is denied pre-commission adjudication of his jurisdictional challenges can be analogized to a claim of immunity. As with double jeopardy, interlocutory orders denying claims of official immunity are properly heard pre-trial. *See Mitchell v. Forsyth*, 472 U.S. 511 (1985). To do otherwise would obviate the very right of immunity claimed by the defendant. Bahlool’s jurisdictional challenges constitute a

² Notably, the sparse and ever-changing rules of the military commission provide no guarantee against double jeopardy. The current incarnation of the rules does provide that an accused detainee “shall not again be tried by any Commission for a charge once a Commission’s finding on that charge becomes final.” *See* Department of Defense Military Commission Order No. 1 (August 31, 2005) (superseding Military Commission Order No. 1 issued March 21, 2002) ¶ 5(P), *available at* <http://www.defenselink.mil/news/Sep2005/d20050902order.pdf>. However, there is nothing in the rules to prevent Respondents from retrying a defendant at any time if the Commission conviction is not deemed “final” (by the President or the Secretary of Defense), or from removing Petitioner from military custody and seeking to try him in federal court, as Respondents are presently attempting in the case of José Padilla. *See Padilla v. Hanft*, -- F.3d. - (4th Cir. December 21, 2005) (No. 05-6396), *available at* <http://pacer.ca4.uscourts.gov/opinion.pdf/056396R1.P.pdf> (denying government motion to transfer Padilla, an “enemy combatant” as designated by the President, from military custody in South Carolina to civilian law enforcement custody in Florida). Moreover, Respondents have argued throughout this litigation that the detainees at Guantánamo Bay are not entitled to any constitutional protections whatsoever, including due process under the Fifth Amendment, *see In re. Guantanamo Detainee Cases*, 355 F.Supp.2d 443 (D.D.C. 2005)), and presumably would argue that Petitioner is not entitled to the Fifth Amendment’s protection against double jeopardy either. However, Bahlool need not demonstrate here that he is entitled to a constitutional right against double jeopardy; rather, the fact that the injury he faces is equivalent to that for which the Constitution provides specific protection establishes the requisite harm for injunctive relief to be granted. And if Respondents are correct that Petitioner is not entitled to assert a right against double jeopardy, then the injury he would suffer is all the more irreparable.

claim to jurisdictional immunity with respect to the military commission. To allow the military commission to proceed against Bahlool before these challenges are resolved would obviate the very rights that Petitioner claims, and specifically, the “right not to be tried by a tribunal that has no jurisdiction.” *Hamdan*, 415 U.S. F.3d at 36.

Petitioner Bahlool faces additional irreparable harm if he is required to participate in a military commission that is structurally biased in favor of Respondents. Bahlool has made exactly this claim in his Supplemental Petition, and this issue is on review before the Supreme Court in *Hamdan*. As the D.C. Circuit held in *Cobell v. Norton*, 33 F. 3d 1128 (D.C. Cir. 2003), post-trial review of partial proceedings is inadequate because the injury done by a partial judicial authority is irreparable:

“The remedy by appeal is inadequate. It comes after the trial and, if prejudice exist, it has worked its evil and a judgment of it in a reviewing tribunal is precarious. It goes there fortified by presumptions, and nothing can be more elusive of estimate or decision than a disposition of a mind in which there is a personal ingredient.”

Cobell, 33 F.3d at 1139 (quoting *Berger v. United States*, 255 U.S. 22, 36, (1921)).

Just as the magnitude of the harm faced by Bahlool cannot be disputed, nor can its imminence. Respondent Altenburg, the Appointing Authority for the military commissions, has ordered that commission proceedings against Bahlool commence. The presiding officer of the commission constituted in Bahlool’s case has since required detailed defense counsel to be available to attend conferences at Guantánamo Bay with the presiding officer from January 9 to January 12, 2006, and has scheduled a formal hearing for January 10, 2006. Thus, the harm faced by Petitioner Bahlool is on the immediate horizon, thereby necessitating a stay.

Any suggestion that the harm faced by Bahlool is speculative must be rejected. If, as Petitioner has argued and the Supreme Court is now considering in *Hamdan*, the military

commission is illegitimate and lacks jurisdiction over Bahlool, then the harm done to him, as recognized by the D.C. Circuit, commences with the first commission proceeding. To permit the commission proceedings to go forward before adjudicating the jurisdictional claims would subject Bahlool to exactly the injury for which, according to the D.C. Circuit, post-commission review would provide insufficient redress. The only way that this harm can be avoided is by having Petitioner's substantial jurisdictional claims adjudicated by the Court pre-commission, and in light of Respondents' decision to initiate commission proceedings during the week of January 9, 2006, such adjudication can only be done if the commission process against Bahlool is stayed.

B. Staying the Military Commission Proceeding Against Petitioner Bahlool Will Not Prejudice Respondents

The staying of the military commission proceeding against Bahlool pending a final decision in *Hamdan* would not prejudice Respondents. Respondents have incarcerated Bahlool for nearly four years. Thus, while Bahlool is eager to bring his indefinite detention to an end, in light of this long delay on Respondents' part it is difficult to see how Respondents would be prejudiced by awaiting a decision by the Supreme Court in a case already pending there. Moreover, in the past Respondents themselves have expressed a desire to stay Guantánamo proceedings in order to permit an appeal in the *Hamdan* case to be decided. Specifically, in the case of *Hicks v. Bush*, 1:02-cv-00299 (CKK), Respondents asked for an abeyance of proceedings in Guantánamo detainee David Hicks's habeas case pending a decision by the D.C. Circuit in *Hamdan*, arguing that judicial economy so warranted because the D.C. Circuit's decision might require reevaluation of issues by the habeas court if it were to act in the interim. *See* Exhibit B, Response to Order to Show Cause, No. 1:02-cv-00299 (CKK)) (D.D.C. filed 11/29/2004).

In *Hamdan* itself (filed as *Swift v. Rumsfeld*), Respondents moved to hold the original habeas petition in abeyance on the grounds of judicial economy in light of then-pending Supreme Court Cases that might effect the outcome. See Exhibit C, Motion for Order Holding Petition in Abeyance, *Swift v. Rumsfeld*, No. C04-777RSL, at 8-9 (W.D. Wash. Filed April 23, 2004) (exhibits excluded). Respondents' earlier appeals to judicial economy in *Hicks* and *Hamdan* justify the issuance of a stay here just as they did in those cases. The argument in favor of a stay is made only stronger by the fact that *Hamdan* is now pending before the Supreme Court, such that the highest court in the land is now poised to rule upon, and may well invalidate, the commission process.

C. The Public Interest Favors Awaiting a Decision From the Supreme Court on the Exact Issues to Be Litigated in the Present Case

Just as Respondents have argued previously in *Hicks* and *Hamdan*, it is in the public interest for the military commission to await guidance from the Supreme Court on issues relating directly to the legality of the commissions. Not only are the interests of judicial economy served by a stay, so, too, is a broader interest in ensuring the legitimacy of the commission process.

While the granting of *certiorari* does not tell us the ultimate outcome of the issues in *Hamdan*, the fact that the case is now pending before the Supreme Court does create the possibility that the commission process will be held illegal. The legitimacy of the commission process therefore hangs in the balance. If the Supreme Court has granted *certiorari*, it is fair to conclude that there is at least reason to believe that the commission may be illegal. For the commission against Bahlool to go forward with *Hamdan* in its current posture would necessarily raise questions about the fairness of the process, thereby doing damage to a public interest in maintaining the integrity of American judicial processes. Indeed, the granting of *certiorari* in *Hamdan* has intensified concerns, both domestically and internationally, regarding standards of

justice at Guantánamo, concerns that previously have been fueled by Respondents' insistence on their right to hold indefinitely those individuals designated as "enemy combatants," and by the numerous, substantiated allegations of torture and abuse of detainees at Guantánamo. As Judge Kollar-Kotelly concluded, "It would not be in the public interest to subject Petitioner to a process which the highest court in the land may determine to be invalid. It is in the public interest to have a final decision, leaving no doubts as to this key jurisdictional issue, before Petitioner's military commission proceedings begin." *Hicks*, 397 F. Supp. 2d at 43.

D. The D.C. Circuit's Decision in *Hamdan* Does Not Preclude the Staying of the Military Commission Against Petitioner Bahlool

Although the D.C. Circuit has decided the merits of *Hamdan* against the petitioner, this does not preclude the staying of the military commission against Petitioner Bahlool. As noted previously, the present request for a stay is to be adjudicated along a sliding scale. Thus, an injunction may issue "where there is a particularly strong likelihood of success on the merits even if there is a relatively slight showing of irreparable injury," *CityFed Financial Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 745 (D.C. Cir. 1995), but may also issue in "a case in which the other three factors strongly favor interim relief ... if the movant has made a *substantial* case on the merits." *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D. C. Cir. 1977) (emphasis added).

While the D.C. Circuit ruled against petitioner on the merits in *Hamdan*, it stated explicitly that the arguments raised by petitioner were substantial. *Hamdan*, 415 F.3d at 36-37. The fact that the Supreme Court has granted *certiorari* further supports the view that petitioner's case on the merits is substantial. See *Hicks*, 397 F. Supp. 2d at 44 ("Recognizing the importance of the D.C. Circuit's ruling in *Hamdan* and the 'substantial' issues raised by those challenging

the military commission's jurisdiction, the Supreme Court has already granted *certiorari* in the case for immediate briefing and oral argument this term."). Even if the Court were to conclude that the likelihood of success on the merits is weak, injunctive relief is still warranted in light of the overwhelming strength of the other three factors.

A weighing of all four factors for injunctive relief therefore favors granting the request to stay the military commission proceeding against Petitioner Bahloul. Such relief fulfills the purpose of interim injunctive relief, "to maintain the status quo pending a final determination of the merits of the suit," *Holiday Tours*, 559 F.2d at 844, and is especially appropriate in light of the impending, ultimate determination of the issues by the Supreme Court.


III. CONCLUSION

Based on the foregoing analysis, Petitioner Bahloul respectfully requests that this court stay the military commission proceedings against him pending a final decision from the Supreme Court in *Hamdan v. Bush*, and order an expedited briefing schedule in light of the impending commission hearings scheduled for the week of January 9, 2006.

Dated: December 29, 2005
New York, NY

Respectfully submitted,

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EXHIBIT A

EXHIBIT A

Muneer Ahmad

From: Hodges, Keith [REDACTED]
Sent: Friday, December 09, 2005 3:36 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: Trial Term for Commissions Sessions, Week of 9 Jan 2006, Guantanamo Bay, Cuba

1. Colonels Brownback and Chester have scheduled a trial term for Military Commissions during the week of 9 Jan 2006 at Guantanamo Bay, Cuba.
2. Counsel in US v. al Bahlul and US v. Khadr will be prepared to attend conferences at the call of the respective Presiding Officers during the period 1200 hours, 9 Jan through 12 Jan.
3. A session will be held in the case of United States v. al Bahlul at 1000, 10 Jan 2006. This will be the earliest session for that case during the trial term. Other sessions may be held during the trial term.
4. A session will be held in the case of United States v. Khadr at 1000, 11 Jan 2006. This will be the earliest session for that case during the trial term. Other sessions may be held during the trial term.
5. This trial term docket is subject to change, however the first session in a specific case will not be held earlier than as indicated in paragraphs 3 and 4 above.
6. The Presiding Officers anticipate that if sessions other than those indicated in paragraphs 3 and 4 above are held, the latest session would be on 12 Jan. However, all parties must realize that the trial term will not end until each Presiding Officer is satisfied that a further session during the trial term would be of no additional benefit.
7. Parties will be kept advised of any changes so that travel and other logistical arrangements can be made.

BY DIRECTION OF THE PRESIDING OFFICER

Keith Hodges
Assistant to the Presiding Officers
Military Commission
[REDACTED]

12/22/2005

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA_____
DAVID M. HICKS,

Petitioner,

v.

GEORGE WALKER BUSH,
President of the United States,
et al.,Respondents.
_____Civil Action No. 1:02-CV-00299 (CKK)
ECF**RESPONSE TO ORDER TO SHOW CAUSE REGARDING RESPONDENTS' MOTION
TO DISMISS OR FOR JUDGMENT AS A MATTER OF LAW WITH RESPECT TO
CHALLENGES TO THE MILITARY COMMISSION PROCESS**

On November 18, 2004, this Court ordered that "counsel for petitioners and respondents shall file written submissions on or before November 29, 2004 showing cause why the respondents' Motion to Dismiss or for Judgment as a Matter of Law with Respect to Challenges to the Military Commission Process should not be held in abeyance pending resolution of all appeals in Hamdan v. Rumsfeld." Order to Show Cause Regarding Respondents' Motion to Dismiss or for Judgment as a Matter of Law with Respect to Challenges to the Military Commission Process at 2 (dkt. no. 123) ("Order"). For the following reasons, respondents do not oppose the suggestion that their pending Motion to Dismiss on military commission issues be held in abeyance.

It is not in the interest of the efficient administration of justice for this Court to review the legality of military commission proceedings at this time. As this Court has stated, "respondents recently filed a notice of appeal in Hamdan seeking expedited review of the legality of the

military commission proceedings that are also at issue in this case." Order at 1. Briefing in the Hamdan appeal is proceeding on an expedited basis and is scheduled to be completed by January 10, 2005.¹ Holding the military commission issues in abeyance is warranted in the instant case because a decision from the D.C. Circuit in Hamdan would provide guidance on how to address these issues. Any decision on the military commission issues in this case that came before the D.C. Circuit's ruling in Hamdan would need to be reevaluated in light of the D.C. Circuit's decision. In the interests of judicial efficiency, the resolution of these issues should be stayed pending the Hamdan decision.

Further, the trial in Mr. Hicks' military commission proceeding is not until March 15, 2005, as currently scheduled. No additional proceedings in the military commission matter are scheduled; thus, it does not appear that the Court needs to resolve the issues raised in this case concerning the military commission proceedings anytime soon. It is quite possible that the D.C. Circuit, working on an expedited review schedule, will make a decision in Hamdan before March 15, 2004. Respondents are willing to notify this Court if the situation regarding the scheduling of the military commission proceedings or the appeal changes.

Therefore, there is currently no reason for this Court not to wait for the D.C. Circuit's decision in Hamdan before addressing these significant issues.

DATED this 29th day of November, 2004.

¹ The petitioner in Hamdan has petitioned the Supreme Court to grant certiorari before judgment in the Court of Appeals, and has sought expedited consideration of the matter. To date, the Supreme Court has not ruled on petitioner's requests.

Respectfully submitted,

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EXHIBIT C

EXHIBIT C

Judge Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Lieutenant Commander CHARLES SWIFT,
as next friend for SALIM AHMED
HAMDAN, Military Commission Detainee,
Camp Echo, Guantanamo Bay Naval Base,
Guantanamo, Cuba,

Petitioner,

v.

DONALD H. RUMSFELD, United States
Secretary of Defense; JOHN D.
ALTENBURG, Jr., Appointing Authority for
Military Commissions, Department of
Defense; Brigadier General THOMAS L.
HEMINGWAY, Legal Advisor to the
Appointing Authority for Military
Commissions; Brigadier General JAY HOOD,
Commander Joint Task Force, Guantanamo,
Camp Echo, Guantanamo Bay, Cuba;
GEORGE W. BUSH, President of the United
States,

Respondents.

NO. C04-0777RSL

**NOTICE OF MOTION AND
MOTION FOR ORDER HOLDING
PETITION IN ABEYANCE;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

(Note on Motion Calendar for:
May 14, 2004)

Respondents, through their attorneys, hereby move this Court for an order that the petition filed herein be held in abeyance. This motion is made on the ground that prior practice, principles of judicial economy, and considerations of inter-branch comity and separation of powers, strongly support respondents' request.

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1 This motion is made and based on the accompanying memorandum of points and
2 authorities, the pleadings and papers filed herein, and such oral argument as the Court may
3 entertain.

4 DATED this 23 day of April, 2004.

5 Respectfully submitted,

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7 United States Attorney

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9 Deputy Solicitor General

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MEMORANDUM OF POINTS AND AUTHORITIES

Respondents respectfully request that this Court hold in abeyance the above-captioned petition for writ of mandamus pursuant to 28 U.S.C. 1361 or, in the alternative, writ of habeas corpus ("petition"), pending the Supreme Court's disposition of Rasul v. Bush, S. Ct. No. 03-334 and Al Odah v. United States, S. Ct. No. 03-343 (argued Apr. 20, 2004), and Rumsfeld v. Padilla, S. Ct. No. 03-1027 (to be argued Apr. 28, 2004). As explained below, prior practice, principles of judicial economy, and considerations of inter-branch comity and separation of powers, strongly support respondents' request.¹

STATEMENT OF FACTS

1. In response to the September 11 attacks, the President dispatched the U.S. armed forces to Afghanistan to seek out and subdue the al Qaeda terrorist network and the Taliban regime that had supported it. U.S. and coalition forces have captured or taken control of thousands of individuals in connection with the ongoing hostilities in Afghanistan. As in virtually every other armed conflict in the Nation's history, the military has determined that many of those individuals should be detained during the conflict as enemy combatants. Such detention serves the vital military objectives of preventing captured combatants from rejoining the conflict and gathering intelligence to further the overall war effort and prevent additional attacks.

Individuals taken into U.S. control in connection with the ongoing hostilities undergo a multi-step screening process to determine if their detention is necessary. Detainees whom the U.S. military determines, after conducting this screening process, have a high potential intelligence value or pose a particular threat may be transferred to the U.S. Naval Base at Guantanamo Bay, Cuba. Only a small fraction of those captured in connection with the current conflict and subjected to the screening process have been designated for detention at

¹ This response is limited to respondents' request to hold the petition in abeyance. By filing this request, respondents do not waive any grounds for dismissal of the petition, including but not limited to lack of jurisdiction, lack of venue, failure to exhaust remedies, and failure to state a claim on which relief could be granted. Respondents propose that, in the event this Court determines that a response to the petition is warranted, it direct respondents to file their response 30 days after the Supreme Court's ruling in Rasul/Al-Odah and Padilla, whichever comes later.

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1 Guantanamo. Upon their arrival at Guantanamo, detainees are subject to an additional
2 assessment by military commanders regarding the need for their detention. The military is
3 currently detaining about 595 aliens at Guantanamo.

4 Pursuant to the November 13, 2001 military order, the President may exercise his
5 authority as Commander in Chief to subject to trial before a military commission any non-
6 citizen detained at Guantanamo or elsewhere who the President has reason to believe (1) is a
7 member of al Qaeda; (2) is engaged in international terrorism aimed at harming the United
8 States; or (3) has knowingly harbored an individual who fits into one of the first two
9 categories. Military Order (Ex. B to Declaration of Lieutenant Commander Charles Swift
10 ("Swift Decl.") § 2(a).

11 2. On July 3, 2003, the President designated Salim Ahmed Hamdan, on whose behalf
12 this petition has been filed, for trial by military commission, upon determining that there was
13 reason to believe that Hamdan was a member of al Qaeda or otherwise involved in terrorism
14 against the United States. July 3, 2003 Background Briefing on Military Commissions (Ex. A
15 to Swift Decl.), at 1. As a result of this designation, the Department of Defense (DOD)
16 assigned Lieutenant Commander Charles Swift to meet with and defend Hamdan, whom DOD
17 may charge with a violation of the laws of war before a military commission. In addition,
18 Hamdan, who had been housed with other enemy combatants at Guantanamo, was moved in
19 December 2003 to a different facility at Guantanamo, Camp Echo, where he has his own cell
20 in which he may have private discussions with his lawyer. Briefing on Detainee Operations at
21 Guantanamo Bay (Ex. C to Swift Decl.), at 10.

22 3. On April 6, 2004, Swift filed this next-friend habeas petition on behalf of Hamdan
23 challenging Hamdan's pre-trial confinement, prospective trial, and continued detention on
24 multiple constitutional, statutory, and treaty-based grounds. Pet. 15-23 (Claims For Relief).
25 The petition requests, among other things, an order mandating Hamdan's release from
26 confinement in Camp Echo, enjoining respondents from enforcing the Military Order of
27 November 13, 2001, compelling respondents to justify Hamdan's continued detention as an
28 enemy combatant, and mandating Hamdan's release from U.S. custody in the absence of

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adequate justification. Pet. 24-25 (Prayer For Relief).

4. Hamdan is not the first Guantanamo detainee to have a federal court challenge filed on his behalf. On February 19, 2002, the parents of four British and Australian nationals at Guantanamo filed in District Court for the District of Columbia a next-friend petition for habeas corpus on behalf of those detainees. On May 1, 2002, the family members of 12 Kuwaiti nationals detained at Guantanamo filed in Washington, D.C. a civil action on their behalf. And on June 10, 2002, the wife of another Guantanamo detainee, Mamdouh Habib, also filed in Washington, D.C. a petition for habeas corpus on his behalf.

The government moved to dismiss all three actions for lack of subject-matter jurisdiction under Johnson v. Eisentrager, 339 U.S. 763 (1950), where the Supreme Court held that neither the Constitution nor the federal habeas statutes conferred jurisdiction to consider a habeas petition filed on behalf of German nationals who had been seized overseas following the German surrender in World War II, tried by a military commission, and imprisoned at a U.S.-controlled facility in Germany. As the government explained in its motions to dismiss, under the principles recognized by the Supreme Court in Eisentrager, the U.S. courts lack jurisdiction over claims filed on behalf of Guantanamo detainees because all of them are aliens with no connection to the United States, and they are being detained outside of the sovereign territory of the United States. The district court agreed with the government and dismissed the challenges for lack of jurisdiction. Rasul v. Bush, 215 F. Supp. 2d 55, 65-73 (D.D.C. 2002).

The D.C. Circuit affirmed. Al Odah v. United States, 321 F.3d 1134 (D.C. Cir.), cert. granted sub nom., Rasul v. Bush, 124 S. Ct. 435 (2003). The court of appeals concluded that “the detainees [in this case] are in all relevant respects in the same position as the prisoners in Eisentrager” and thus held that, under the fundamental principles established by the Supreme Court in Eisentrager, “the [United States] courts are not open to them.” Id. at 1145. As the court explained, like the prisoners in Eisentrager, the Guantanamo detainees “too are aliens, they too were captured during military operations, they were in a foreign country when captured, they are now abroad, they are in the custody of the American

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1 military, and they have never had any presence in the United States.” Id. at 1140.

2 The D.C. Circuit’s decision is now before the Supreme Court, which granted certiorari
3 to consider “[w]hether United States courts lack jurisdiction to consider challenges to the
4 legality of the detention of foreign nationals captured abroad in connection with hostilities and
5 incarcerated at the Guantanamo Bay Naval Base, Cuba.” Rasul v. Bush, 124 S. Ct. 534
6 (2003) (S. Ct. No. 03-334); Al Odah v. United States, 124 S. Ct. 534 (2003) (S. Ct.
7 No. 03-343). A copy of the government’s brief in Rasul/Al Odah is attached as Exhibit A.

8 The Supreme Court heard argument in Rasul and Al-Odah on April 20, 2004, and a
9 decision is expected by late June 2004 before the Court’s summer recess. If the Supreme
10 Court upholds the D.C. Circuit’s ruling that aliens held abroad cannot access the U.S. courts,
11 then this petition must be dismissed for lack of jurisdiction.²

12 5. Additional federal court challenges have been filed on behalf of Guantanamo
13 detainees and have been stayed pending the Supreme Court’s decision in Rasul/Al Odah. For
14 example, following the Ninth Circuit’s ruling that the District Court for the Central District of
15 California had jurisdiction to consider a petition for a writ of habeas corpus filed on behalf of
16 Salim Gherebi, a Guantanamo detainee, Gherebi v. Bush, 352 F.3d 1278 (9th Cir. 2003), the
17 Ninth Circuit stayed its mandate and then the Supreme Court granted the government’s
18 application for a stay of proceedings in the case pending the filing and disposition of a petition
19 for a writ of certiorari asking the Supreme Court to hold Gherebi for the decision in Rasul/Al
20 Odah. Bush v. Gherebi, No. 03A637, 124 S. Ct. 1197 (Feb. 5, 2004). That stay is still in
21 effect.

22 Similarly, on April 9, 2004, the District Court for the Central District of California
23 stayed a second action filed on behalf of Gherebi “in light of the Supreme Court’s imminent
24 decision in [Rasul and Al Odah] raising the same threshold jurisdictional issue as this case.”

25 ² Petitioner in this case filed an amicus brief in the Supreme Court in Al-Odah urging the Court
26 “to preserve the option of case-by-case review to assess jurisdiction” rather than issue a broad ruling
27 foreclosing access to the federal courts by all those held in Guantanamo regardless of the nature of the
28 challenge. Brief Of The Military Attorneys Assigned To The Defense In The Office Of Military
Commissions As Amicus Curiae In Support Of Neither Party, Al-Odah v. United States, No. 03-343,
at 4.

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1 Gherebi v. Bush, CV 04-0210-RSWL (MANX), Order Granting Application For A Stay And
2 Extension Of Time (attached as Exhibit B), at 2.

3 6. The case of Jose Padilla, a U.S. citizen enemy combatant detained at the naval brig
4 in Charleston, South Carolina, raises an issue that this Court would face if the Supreme Court
5 held in Rasul/Al Odah that aliens captured, detained, and prosecuted outside the United States
6 during wartime are permitted to file habeas challenges in federal court – namely, whether this
7 Court's habeas jurisdiction under 28 U.S.C. 2241 extends to respondents who are located
8 outside its territorial jurisdiction.

9 In Padilla, the government argued before the federal district court in New York and the
10 court of appeals that even if Secretary Rumsfeld were a proper respondent, the district court
11 for the Southern District of New York did not have habeas jurisdiction over him because he is
12 located in the Eastern District of Virginia. That issue is now before the Supreme Court,
13 which will hear argument in the case on April 28, 2004. See Brief For The Petitioner,
14 Rumsfeld v. Padilla, S. Ct. No. 03-1027, at (I), 21-26 (attached as Ex. C). If the government
15 prevails on that issue in Padilla, then this Court would be obliged to dismiss or transfer this
16 petition, because none of the respondents that petitioner has named is located in the Western
17 District of Washington. Moreover, however the Supreme Court ultimately resolves Rasul/Al
18 Odah and Padilla, its decisions almost certainly will shed additional light on, inter alia, the
19 jurisdiction of the federal courts to entertain a habeas challenge to the detention of enemy
20 combatants.

ARGUMENT

21
22 A federal court has "broad discretion to stay proceedings as an incident to its power to
23 control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997). "Especially in cases of
24 extraordinary public moment, [a plaintiff] may be required to submit to delay not immoderate
25 in extent and not oppressive in its consequences if the public welfare or convenience will
26 thereby be promoted." Landis v. North American Co., 299 U.S. 248, 256 (1936); see also
27 Leyva v. Certified Grocers of Cal., Ltd., 593 F.2d 857, 863 (9th Cir. 1979) (Kennedy, J.) (It
28 is well-settled that "trial court may, with propriety, find it is efficient for its own docket and

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1 the fairest course for the parties to enter a stay of an action before it, pending resolution of
2 independent proceedings which bear upon the case.”).

3 Federal courts routinely exercise their discretion to hold cases in abeyance when an
4 impending decision from the Supreme Court is likely to shed light on the issue(s) before them.
5 See, e.g., United States v. Toliver, 351 F.3d 423, 429 n.3 (9th Cir. 2003) (“[W]e deferred
6 consideration of the defendants’ consolidated appeals pending [Supreme Court decision].”);
7 Hensala v. Dep’t of the Air Force, 343 F.3d 951, 955 (9th Cir. 2003) (“We ordered the
8 submission of this case deferred pending [Supreme Court decision].”); Majors v. Abell,
9 361 F.3d 349, 352 (7th Cir. 2004) (deferring consideration of challenge to constitutionality of
10 state statute until the Supreme Court decided challenge to constitutionality of “rather similar”
11 federal law); Marshel v. AFW Fabric Corp., 552 F.2d 471, 472 (2d Cir. 1977) (per curiam)
12 (directing district court to stay further proceedings pending Supreme Court’s resolution of
13 “closely related case” that will “in all likelihood” decide question presented).

14 Because the Supreme Court’s impending decision in Rasul/Al Odah will be potentially
15 dispositive of the threshold jurisdictional issue presented by the petition, and because Padilla
16 will be potentially dispositive of the propriety of filing the petition in the Western District of
17 Washington, this Court should hold the petition in abeyance until those cases are decided.
18 Indeed, it would be an unnecessary expenditure of resources for the parties to litigate – and
19 for this Court to adjudicate – the very same jurisdictional issues the Supreme Court is
20 virtually certain to address over the next two months and resolve in a manner that will dispose
21 of this petition or, at a minimum, provide substantial guidance regarding its viability in the
22 federal courts and the Western District of Washington in particular.

23 Not only do the interests in judicial economy and conservation of resources tip
24 decidedly in favor of temporarily suspending these proceedings, but the prejudice to Hamdan
25 is also minimal. The Supreme Court is expected – in accordance with its custom of deciding
26 argued cases before its summer recess – to hand down its decisions in Rasul/Al Odah and
27 Padilla by the end of June, little more than two months from now. Those decisions either will
28 require the outright dismissal or transfer of the petition or, if they do not, will considerably

1 narrow the issues that this Court must address in the motion to dismiss that respondents intend
2 to file. Either way, Hamdan suffers little by deferring proceedings briefly until the Supreme
3 Court rules. And, at the same time, both parties, not to mention the Court, are likely to
4 benefit from the guidance provided by those decisions in framing and resolving the threshold
5 issues presented by the petition in this case.

6 Finally, especially where these matters are pending before the Supreme Court,
7 requiring the Executive to respond at this time to the petition in this case filed on behalf of an
8 alien held abroad in connection with ongoing hostilities raises inter-branch comity and
9 separation-of-powers concerns. The Court may avoid those concerns simply by holding this
10 case in abeyance for the relatively brief period until the Supreme Court issues its decisions in
11 Al Odah/Rasul and Padilla.

CONCLUSION

For the foregoing reasons, respondents respectfully urge this Court to hold the petition in abeyance pending the Supreme Court's decisions in Rasul/Al Odah and Padilla.

DATED this 23 day of April, 2004.

Respectfully submitted,

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 23, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participant(s):

David Roy East

Joseph McMillan

Harry H. Schneider

Charles Christian Sipos

and I further certify that on the same date I caused to be mailed by United States Postal Service the document to the following non-CM/ECF participants:

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s/ Christine Leininger
CHRISTINE LEININGER
Supervisory Legal Assistant
United States Attorney's Office

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

DECLARATION OF SERVICE

Michelle Kass hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

I am a paralegal at Hunton & Williams LLP, attorneys for Petitioner Ali Hamza Ahmed Suliman Bahlool.

That on December 30, 2005, I served a true copy of Petitioner's Motion to Stay Military Commission Proceedings and for Expedited Briefing Schedule on all parties via the Court's ECF System, and on all parties who did not receive these court filings via the Court's ECF system, by depositing same in a duly enclosed and sealed wrapper, with the correct postage thereon, in an official letter box duly maintained by the Government of the United States of America within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed December 30, 2005.



Michelle Kass

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, et al.,

Petitioners,

V.

GEORGE WALKER BUSH, et al.,

Respondents.

Civil Action No: 05-2104 (RBW)

ORDER

On December 30, 2005, President Bush signed into law H.R. 2863, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006 (“the Act”). Section 1005(e) of the Act, entitled Judicial Review of Detention of Enemy Combatants, provides that

(1) IN GENERAL- Section 2241 of title 28, United States Code, is amended by adding at the end the following:

(e) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider—

(1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or

(2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who—

“(A) is currently in military custody; or

(B) has been determined by the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1005(e) of the Detainee Treatment Act of 2005 to have been properly detained as an enemy combatant.'.

The Act raises serious questions concerning whether this Court retains jurisdiction to hear this case and all related matters. Accordingly, it is, this 4th day of January, 2006, hereby

ORDERED that the petitioners shall show cause by January 12, 2006, why this action should not be dismissed for lack of jurisdiction. It is further

ORDERED that the respondents shall file any response thereto by January 19, 2006, and the petitioners shall file a reply, if any, by January 24, 2006.

SO ORDERED.

REGGIE B. WALTON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|--------------------------|---|---------------------------|
| Hicks (Rasul) v. Bush |) | Case No. 02-CV-0299 (CKK) |
| Al Odah v. United States |) | Case No. 02-CV-0828 (CKK) |
| Habib v. Bush |) | Case No. 02-CV-1130 (CKK) |
| Kurnaz v. Bush |) | Case No. 04-CV-1135 (ESH) |
| Khadr v. Bush |) | Case No. 04-CV-1136 (JDB) |
| Begg v. Bush |) | Case No. 04-CV-1137 (RMC) |
| El-Banna v. Bush |) | Case No. 04-CV-1144 (RWR) |
| Gherebi v. Bush |) | Case No. 04-CV-1164 (RBW) |
| Anam v. Bush |) | Case No. 04-CV-1194 (HHK) |
| Almurbati v. Bush |) | Case No. 04-CV-1227 (RBW) |
| Abdah v. Bush |) | Case No. 04-CV-1254 (HHK) |
| Hamdan v. Bush |) | Case No. 04-CV-1519 (JR) |
| Al-Qosi v. Bush |) | Case No. 04-CV-1937 (PLF) |
| Paracha v. Bush |) | Case No. 04-CV-2022 (PLF) |
| Al-Marri v. Bush |) | Case No. 04-CV-2035 (GK) |
| Zemiri v. Bush |) | Case No. 04-CV-2046 (CKK) |
| Deghayes v. Bush |) | Case No. 04-CV-2215 (RMC) |
| Mustapha v. Bush |) | Case No. 05-CV-0022 (JR) |
| Abdullah v. Bush |) | Case No. 05-CV-0023 (RWR) |
| Al-Mohammed v. Bush |) | Case No. 05-CV-0247 (HHK) |

| | | |
|--------------------|---|--|
| El-Mashad v. Bush |) | Case No. 05-CV-0270 (JR) (consolidated with 05-CV-833) |
| Al-Adahi v. Bush |) | Case No. 05-CV-0280 (GK) |
| Al-Joudi v. Bush |) | Case No. 05-CV-0301 (GK) |
| Doe 1-570 v. Bush |) | Case No. 05-CV-0313 (CKK) |
| Al-Wazan v. Bush |) | Case No. 05-CV-0329 (PLF) |
| Al-Anazi v. Bush |) | Case No. 05-CV-0345 (JDB) |
| Alhami v. Bush |) | Case No. 05-CV-0359 (GK) |
| Ameziane v. Bush |) | Case No. 05-CV-0392 (ESH) |
| Batarfi v. Bush |) | Case No. 05-CV-0409 (EGS) |
| Sliti v. Bush |) | Case No. 05-CV-0429 (RGL) |
| Kabir v. Bush |) | Case No. 05-CV-0431 (RGL) |
| Qayed v. Bush |) | Case No. 05-CV-0454 (RMU) |
| Al-Shihry v. Bush |) | Case No. 05-CV-0490 (PLF) |
| Aziz v. Bush |) | Case No. 05-CV-0492 (JR) |
| Al-Oshan v. Bush |) | Case No. 05-CV-0520 (RMU) |
| Tumani v. Bush |) | Case No. 05-CV-0526 (RMU) |
| Al-Oshan v. Bush |) | Case No. 05-CV-0533 (RJL) |
| Salahi v. Bush |) | Case No. 05-CV-0569 (JR) (Consolidated with 05-CV-0881) (Consolidated with 05-CV-0995) |
| Mammar v. Bush |) | Case No. 05-CV-0573 (RJL) |
| Al-Sharekh v. Bush |) | Case No. 05-CV-0583 (RJL) |

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|----------------------|---|---------------------------|
| Magram v. Bush |) | Case No. 05-CV-0584 (CKK) |
| Al Rashaidan v. Bush |) | Case No. 05-CV-0586 (RWR) |
| Mokit v. Bush |) | Case No. 05-CV-0621 (PLF) |
| Al Daini v. Bush |) | Case No. 05-CV-0634 (RWR) |
| Errachidi v. Bush |) | Case No. 05-CV-0640 (EGS) |
| Ahmed v. Bush |) | Case No. 05-CV-0665 (RWR) |
| Battayav v. Bush |) | Case No. 05-CV-0714 (RBW) |
| Adem v. Bush |) | Case No. 05-CV-0723 (RWR) |
| Aboassy v. Bush |) | Case No. 05-CV-0748 (RMC) |
| Hamlily v. Bush |) | Case No. 05-CV-0763 (JDB) |
| Imran v. Bush |) | Case No. 05-CV-0764 (CKK) |
| Al Habashi v. Bush |) | Case No. 05-CV-0765 (EGS) |
| Al Hamamy v. Bush |) | Case No. 05-CV-0766 (RJL) |
| Hamoodah v. Bush |) | Case No. 05-CV-0795 (RJL) |
| Khiali-Gul v. Bush |) | Case No. 05-CV-0877 (JR) |
| Rahmattullah v. Bush |) | Case No. 05-CV-0878 (CKK) |
| Mohammad v. Bush |) | Case No. 05-CV-0879 (RBW) |
| Nasrat v. Bush |) | Case No. 05-CV-0880 (ESH) |
| Rahman v. Bush |) | Case No. 05-CV-0882 (GK) |
| Bostan v. Bush |) | Case No. 05-CV-0883 (RBW) |
| Muhibullah v. Bush |) | Case No. 05-CV-0884 (RMC) |
| Mohammad v. Bush |) | Case No. 05-CV-0885 (GK) |

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| Wahab v. Bush |) | Case No. 05-CV-0886 (EGS) |
| Chaman v. Bush |) | Case No. 05-CV-0887 (RWR) |
| Gul v. Bush |) | Case No. 05-CV-0888 (CKK) |
| Basardh v. Bush |) | Case No. 05-CV-0889 (ESH) |
| Khan v. Bush |) | Case No. 05-CV-0890 (RMC) |
| Nasrullah v. Bush |) | Case No. 05-CV-0891 (RBW) |
| Shaaban v. Bush |) | Case No. 05-CV-0892 (CKK) |
| Sohail v. Bush |) | Case No. 05-CV-0993 (RMU) |
| Tohirjanovich v. Bush |) | Case No. 05-CV-0994 (JDB) |
| Khudaidad v. Bush |) | Case No. 05-CV-0997 (PLF) |
| Al Karim v. Bush |) | Case No. 05-CV-0998 (RMU) |
| Al-Khalaqi v. Bush |) | Case No. 05-CV-0999 (RBW) |
| Sarajuddin v. Bush |) | Case No. 05-CV-1000 (PLF) |
| Kahn v. Bush |) | Case No. 05-CV-1001 (ESH) |
| Mohammed v. Bush |) | Case No. 05-CV-1002 (EGS) |
| Mangut v. Bush |) | Case No. 05-CV-1008 (JDB) |
| Hamad v. Bush |) | Case No. 05-CV-1009 (JDB) |
| Khan v. Bush |) | Case No. 05-CV-1010 (RJL) |
| Zuhoor v. Bush |) | Case No. 05-CV-1011 (JR) |
| Ali Shah v. Bush |) | Case No. 05-CV-1012 (ESH) |
| Salaam v. Bush |) | Case No. 05-CV-1013 (JDB) |
| Al-Hela v. Bush |) | Case No. 05-CV-1048 (RMU) |

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| Mousovi v. Bush |) | Case No. 05-CV-1124 (RMC) |
| Khalifh v. Bush |) | Case No. 05-CV-1189 (JR) |
| Zalita v. Bush |) | Case No. 05-CV-1220 (RMU) |
| Ahmed v. Bush |) | Case No. 05-CV-1234 (EGS) |
| Baqi v. Bush |) | Case No. 05-CV-1235 (PLF) |
| Aminullah v. Bush |) | Case No. 05-CV-1237 (ESH) |
| Ghalib v. Bush |) | Case No. 05-CV-1238 (CKK) |
| Al Khaiy v. Bush |) | Case No. 05-CV-1239 (RJL) |
| Bukhari v. Bush |) | Case No. 05-CV-1241 (RMC) |
| Pirzai v. Bush |) | Case No. 05-CV-1242 (RCL) |
| Peerzai v. Bush |) | Case No. 05-CV-1243 (RCL) |
| Alsawam v. Bush |) | Case No. 05-CV-1244 (CKK) |
| Mohammadi v. Bush |) | Case No. 05-CV-1246 (RWR) |
| Al Ginco v. Bush |) | Case No. 05-CV-1310 (RJL) |
| Ullah v. Bush |) | Case No. 05-CV-1311 (RCL) |
| Al Bihani v. Bush |) | Case No. 05-CV-1312 (RJL) |
| Mohammed v. Bush |) | Case No. 05-CV-1347 (GK) |
| Saib v. Bush |) | Case No. 05-CV-1353 (RMC) |
| Hatim v. Bush |) | Case No. 05-CV-1429 (RMU) |
| Al-Subaiy v. Bush |) | Case No. 05-CV-1453 (RMU) |
| Dhiab v. Bush |) | Case No. 05-CV-1457 (GK) |
| Ahmed Doe v. Bush |) | Case No. 05-CV-1458 (ESH) |

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| Sadkhan v. Bush |) | Case No. 05-CV-1487 (RMC) |
| Faizullah v. Bush |) | Case No. 05-CV-1489 (RMU) |
| Faraj v. Bush |) | Case No. 05-CV-1490 (PLF) |
| Khan v. Bush |) | Case No. 05-CV-1491 (JR) |
| Ahmad v. Bush |) | Case No. 05-CV-1492 (RCL) |
| Amon v. Bush |) | Case No. 05-CV-1493 (RBW) |
| Al Wirghi v. Bush |) | Case No. 05-CV-1497 (RCL) |
| Nabil v. Bush |) | Case No. 05-CV-1504 (RMC) |
| Al Hawary v. Bush |) | Case No. 05-CV-1505 (RMC) |
| Shafiiq v. Bush |) | Case No. 05-CV-1506 (RMC) |
| Kiyemba v. Bush |) | Case No. 05-CV-1509 (RMU) |
| Idris v. Bush |) | Case No. 05-CV-1555 (JR) (Consolidated with 05-CV-1725) |
| Attash v. Bush |) | Case No. 05-CV-1592 (RCL) |
| Al Razak v. Bush |) | Case No. 05-CV-1601 (GK) |
| Mamet v. Bush |) | Case No. 05-CV-1602 (ESH) |
| Rabbani v. Bush |) | Case No. 05-CV-1607 (RMU) |
| Zahir v. Bush |) | Case No. 05-CV-1623 (RWR) (Consolidated with 05-CV-01236) |
| Akhtiar v. Bush |) | Case No. 05-CV-1635 (PLF) |
| Ghanem v. Bush |) | Case No. 05-CV-1638 (CKK) |
| Albkri v. Bush |) | Case No. 05-CV-1639 (RBW) |
| Al-Badah v. Bush |) | Case No. 05-CV-1641 (CKK) |

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| Almerfeddi v. Bush |) | Case No. 05-CV-1645 (PLF) |
| Zaid v. Bush |) | Case No. 05-CV-1646 (JDB) |
| Al-Bahooth v. Bush |) | Case No. 05-CV-1666 (ESH) |
| Al-Siba'i v. Bush |) | Case No. 05-CV-1667 (RBW) |
| Al-Uwaidah v. Bush |) | Case No. 05-CV-1668 (GK) |
| Al-Jutaili v. Bush |) | Case No. 05-CV-1669 (TFH) |
| Ali Ahmed v. Bush |) | Case No. 05-CV-1678 (GK) |
| Khandan v. Bush |) | Case No. 05-CV-1697 (RBW) |
| Kabir (Sadar Doe) v. Bush |) | Case No. 05-CV-1704 (JR) |
| Al-Rubaish v. Bush |) | Case No. 05-CV-1714 (RWR) |
| Qasim v. Bush |) | Case No. 05-CV-1779 (JDB) |
| Sameur v. Bush |) | Case No. 05-CV-1806 (CKK) |
| Al-Harbi v. Bush |) | Case No. 05-CV-1857 (CKK) |
| Aziz v. Bush |) | Case No. 05-CV-1864 (HHK) |
| Mamet v. Bush |) | Case No. 05-CV-1886 (EGS) |
| Hamoud v. Bush |) | Case No. 05-CV-1894 (RWR) |
| Al-Qahtani v. Bush |) | Case No. 05-CV-1971 (RMC) |
| Alkhemisi v. Bush |) | Case No. 05-CV-1983 (RMU) |
| Gamil v. Bush |) | Case No. 05-CV-2010 (JR) |
| Al-Shabany v. Bush |) | Case No. 05-CV-2029 (JDB) |
| Zakirjan v. Bush |) | Case No. 05-CV-2053 (HHK) |
| Muhammed v. Bush |) | Case No. 05-CV-2087 (RMC) |

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| Othman v. Bush |) | Case No. 05-CV-2088 (RWR) |
| Ali Al Jayfi v. Bush |) | Case No. 05-CV-2104 (RBW) |
| Jamolivich v. Bush |) | Case No. 05-CV-2112 (RBW) |
| Al-Mudafari v. Bush |) | Case No. 05-CV-2185 (JR) |
| Al-Mithali v. Bush |) | Case No. 05-CV-2186 (ESH) |
| Al-Asadi v. Bush |) | Case No. 05-CV-2197 (HHK) |
| Alhag v. Bush |) | Case No. 05-CV-2199 (HHK) |
| Nakheelan v. Bush |) | Case No. 05-CV-2201 (ESH) |
| Al Subaie v. Bush |) | Case No. 05-CV-2216 (RCL) |
| Ghazy v. Bush |) | Case No. 05-CV-2223 (RJL) |
| Al Khatemi v. Bush |) | Case No. 05-CV-2248 (ESH) |
| Al-Shimrani v. Bush |) | Case No. 05-CV-2249 (RMC) |
| Amin v. Bush |) | Case No. 05-CV-2336 (PLF) |
| Al Sharbi v. Bush |) | Case No. 05-CV-2348 (EGS) |
| Ben Bacha v. Bush |) | Case No. 05-CV-2349 (RMC) |
| Zadran v. Bush |) | Case No. 05-CV-2367 (RWR) |
| Alsaei v. Bush |) | Case No. 05-CV-2369 (RWR) |
| Razakah v. Bush |) | Case No. 05-CV-2370 (EGS) |
| Al Darby v. Bush |) | Case No. 05-CV-2371 (RCL) |
| Haleem v. Bush |) | Case No. 05-CV-2376 (RBW) |
| Al-Ghizzawi v. Bush |) | Case No. 05-CV-2378 (JDB) |
| Awad v. Bush |) | Case No. 05-CV-2379 (JR) |

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| Al-Baidany v. Bush |) | Case No. 05-CV-2380 (CKK) |
| Al Rammi v. Bush |) | Case No. 05-CV-2381 (JDB) |
| Said v. Bush |) | Case No. 05-CV-2384 (RWR) |
| Mohammon v. Bush |) | Case No. 05-CV-2386 (RBW) |
| Al-Quhtani v. Bush |) | Case No. 05-CV-2387 (RMC) |
| Thabid v. Bush |) | Case No. 05-CV-2398 (ESH) |
| Al Yafie v. Bush |) | Case No. 05-CV-2399 (RJL) |
| Rimi v. Bush |) | Case No. 05-CV-2427 (RJL) |
| Almjrd v. Bush |) | Case No. 05-CV-2444 (RMC) |
| Al Salami v. Bush |) | Case No. 05-CV-2452 (PLF) |
| Al Shareef v. Bush |) | Case No. 05-CV-2458 (RWR) |
| Khan v. Bush |) | Case No. 05-CV-2466 (RCL) |
| Hussein v. Bush |) | Case No. 05-CV-2467 (PLF) |
| Al-Delebany v. Bush |) | Case No. 05-CV-2477 (RMU) |
| Al-Harbi v. Bush |) | Case No. 05-CV-2479 (HHK) |

NOTICE OF SUPPLEMENTAL AUTHORITY

Respondents hereby give notice of the recent enactment of legislation that, among other things, amends 28 U.S.C. § 2241 to remove court jurisdiction to hear or consider applications for writs of habeas corpus and other actions brought in this Court by or on behalf of aliens detained at Guantanamo Bay, Cuba. See Department of Defense Appropriations Act, 2006, Pub. L. No. ___, § 1005 (2005) (signed by President Bush on Dec. 30, 2005) (copy of relevant excerpts attached).¹ No sooner than the week of January 9, 2006, respondents anticipate filing in each of the above-captioned cases a motion to dismiss or for other appropriate relief based on the new legislation. Prior to or shortly after filing of such motion, respondents will consult with petitioners' counsel in an effort to agree upon a briefing schedule that can be proposed to the Court.

Dated: January 3, 2006

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

DOUGLAS N. LETTER
Terrorism Litigation Counsel

[signature block continued on following page]

¹ Section 1005 is part of Title X of the Department of Defense Appropriations Act, 2006. Title X is also known as the Detainee Treatment Act of 2005. See Department of Defense Appropriations Act, 2006, Pub. L. No. ___, § 1001 (2005).

/s/ Joseph H. Hunt

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H. R. 2863

One Hundred Ninth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the fourth day of January, two thousand and five*

An Act

Making appropriations for the Department of Defense for the fiscal year ending
September 30, 2006, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

DIVISION A

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

That the following sums are appropriated, out of any money in
the Treasury not otherwise appropriated, for the fiscal year ending
September 30, 2006, for military functions administered by the
Department of Defense and for other purposes, namely:

TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest
on deposits, gratuities, permanent change of station travel
(including all expenses thereof for organizational movements), and
expenses of temporary duty travel between permanent duty sta-
tions, for members of the Army on active duty, (except members
of reserve components provided for elsewhere), cadets, and aviation
cadets; for members of the Reserve Officers' Training Corps; and
for payments pursuant to section 156 of Public Law 97-377, as
amended (42 U.S.C. 402 note), and to the Department of Defense
Military Retirement Fund, \$28,191,287,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest
on deposits, gratuities, permanent change of station travel
(including all expenses thereof for organizational movements), and
expenses of temporary duty travel between permanent duty sta-
tions, for members of the Navy on active duty (except members
of the Reserve provided for elsewhere), midshipmen, and aviation
cadets; for members of the Reserve Officers' Training Corps; and
for payments pursuant to section 156 of Public Law 97-377, as
amended (42 U.S.C. 402 note), and to the Department of Defense
Military Retirement Fund, \$22,788,101,000.

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(J) An assessment, in a classified annex if necessary, of United States military requirements, including planned force rotations, through the end of calendar year 2006.

SEC. 9011. Supervision and administration costs associated with a construction project funded with appropriations available for operation and maintenance, and executed in direct support of the Global War on Terrorism only in Iraq and Afghanistan, may be obligated at the time a construction contract is awarded: *Provided*, That for the purpose of this section, supervision and administration costs include all in-house Government costs.

SEC. 9012. Amounts appropriated or otherwise made available in this title are designated as making appropriations for contingency operations related to the global war on terrorism pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.

TITLE X—MATTERS RELATING TO DETAINEES

SEC. 1001. SHORT TITLE.

This title may be cited as the “Detainee Treatment Act of 2005”.

SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE DEPARTMENT OF DEFENSE.

(a) IN GENERAL.—No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.

(b) APPLICABILITY.—Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.

(c) CONSTRUCTION.—Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.

SEC. 1003. PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT OF PERSONS UNDER CUSTODY OR CONTROL OF THE UNITED STATES GOVERNMENT.

(a) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(b) CONSTRUCTION.—Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.

(c) LIMITATION ON SUPERSEDITION.—The provisions of this section shall not be superseded, except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.

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(d) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this section, the term “cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

SEC. 1004. PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL ENGAGED IN AUTHORIZED INTERROGATIONS.

(a) PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL.—In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent’s engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) COUNSEL.—The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution arising out of practices described in that subsection, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10, United States Code.

SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are

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in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the “Designated Civilian Official”) shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

(B) the probative value (if any) of any such statement.

(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

(d) ANNUAL REPORT.—

(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

(A) The number of detainees whose status was reviewed.

(B) The procedures used at each location.

(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

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(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

“(e) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider—

“(1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or

“(2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who—

“(A) is currently in military custody; or

“(B) has been determined by the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1005(e) of the Detainee Treatment Act of 2005 to have been properly detained as an enemy combatant.”.

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government’s evidence); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the

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release of such alien from the custody of the Department of Defense.

(3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).

(B) GRANT OF REVIEW.—Review under this paragraph—

(i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

(C) LIMITATION ON APPEALS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—

(i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a final decision has been rendered pursuant to such military order.

(D) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on an appeal of a final decision with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the final decision was consistent with the standards and procedures specified in the military order referred to in subparagraph (A); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to reach the final decision is consistent with the Constitution and laws of the United States.

(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

(g) UNITED STATES DEFINED.—For purposes of this section, the term “United States”, when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act.

(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection

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(e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

(a) REQUIRED POLICIES.—

(1) **IN GENERAL.**—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

(2) **ACKNOWLEDGMENT OF TRAINING.**—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

(3) **DEADLINE FOR POLICIES TO BE PRESCRIBED.**—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act.

(b) ARMY FIELD MANUAL.—

(1) **TRANSLATION.**—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

(2) **DISTRIBUTION.**—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

(c) **TRANSMITTAL OF REGULATIONS.**—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

(d) **ANNUAL REPORT.**—Not less than one year after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.

This division may be cited as the “Department of Defense Appropriations Act, 2006”.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

**PETITIONER ALI HAMZA AHMED SULIMAN BAHLOOL'S
MOTION TO WITHDRAW MOTION TO
STAY MILITARY COMMISSION PROCEEDINGS
AND FOR EXPEDITED BRIEFING SCHEDULE**

On January 30, 2005, Petitioner Suliman Bahloul moved for an Order to stay military commission proceedings that have been initiated against him by Respondents in Guantánamo Bay, Cuba until the Supreme Court has issued its decision in *Hamdan v. Rumsfeld*, 415 U.S. F.3d 33 (D.C. Cir. 2005), *cert. granted*, 74 U.S.L.W. 3108 (U.S. Nov. 7, 2005) (No. 05-184). This Court issued Minute Orders on January 3, 2005, ordering Respondents to oppose the aforementioned Motion on or before January 6, 2005. Petitioner Suliman Bahloul has determined that it is in his best interest not to pursue further a stay of his military commission proceedings at this time. Accordingly, Petitioner Bahloul respectfully moves to withdraw his Motion to Stay, without prejudice to his right to seek relief with respect to his military commission proceedings in the future, and to vacate the January 3, 2005 Minute Orders

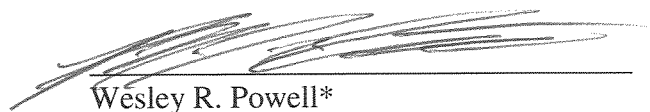
concerning Respondents' submission of opposition briefing. Respondents have consented to this relief.

A proposed order is attached hereto.

Dated: January 6, 2006
New York, NY

Respectfully submitted,

Counsel for Petitioners/Plaintiffs:



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

(PROPOSED) ORDER

Having considered Petitioner Suliman Bahlool's Motion to Withdraw his recently filed Motion to Stay Military Commission Proceedings and for Expedited Briefing Schedule, and the entire record in this case, it is hereby:

ORDERED that Petitioner Suliman Bahlool's Motion to Withdraw Without Prejudice his Motion to Stay Military Commission Proceedings and for Expedited Briefing Schedule be, and hereby is, **GRANTED**.

ORDERED that the Court's January 3, 2006 Minute Orders concerning briefing on the Motion to Stay are hereby **VACATED**.

IT IS SO ORDERED.

DATED: _____

REGGIE B. WALTON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

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) Case No. 1:05-CV-02104 (RBW)
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DECLARATION OF SERVICE

Michelle Kass hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

I am a paralegal at Hunton & Williams LLP, attorneys for Petitioner Ali Hamza Ahmed Suliman Bahlool.

That on January 6, 2006, I served a true copy of Petitioner's Motion to Withdraw Motion to Stay Military Commission Proceedings and for Expedited Briefing Schedule on all parties via the Court's ECF System, and on all parties who did not receive these court filings via the Court's ECF system, by depositing same in a duly enclosed and sealed wrapper, with the correct postage thereon, in an official letter box duly maintained by the Government of the United States of America within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed January 6, 2006.



Michelle Kass

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-02104 (RBW)

ABDUL HALEEM

Petitioner/Plaintiff,

v.

**GEORGE W. BUSH, President of the United States,
et al.**

Respondents/Defendants.

Case No. 05-2376(RBW)

**ABDUL-HADI MUHAMMAD AL SIBA'I, by and
through his next friend, ABDULLAH MUHAMMAD
AL-SIBA'I,**

Petitioners,

v.

**GEORGE W. BUSH, DONALD RUMSFELD,
ARMY BRIG. GEN. JAY HOOD, and ARMY COL.
MIKE BUMGARNER,**

Respondents.

Case No. 1:05-CV-01667 (RBW)

ELHAM BATTAYAV,

Petitioner/Plaintiff,

V.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 05-CV-00714 (RBW)

AL MURBATI, *et al.*,

Petitioners/Plaintiffs,

V.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 04-CV-1227 (RBW)

NASRULLAH,

Petitioner/Plaintiff,

V.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 1:05-CV-00891 (RBW)

MOHAMMED AMON,

Petitioner/Plaintiff,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 05-CV-1493 (RBW)

TAJ MOHAMMAD,

Petitioner/Plaintiff,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 05-CV-0879 (RBW)

KARIN BOSTAN,

Petitioner/Plaintiff,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 05-CV-883 (RBW)

AMEEN MOHAMMAD ALBKRI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 05-CV-1639 (RBW)

GHEREBI,

Petitioner/Plaintiff,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

ASIM BEN THABIT AL-KHALAQI,

Petitioner/Plaintiff,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

KHANDAN

Petitioner/Plaintiff,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

JAMOLIVICH,

Petitioner/Plaintiff,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

Case No. 04-CV-1164 (RBW)

Case No. 05-CV-999 (RBW)

Case No. 05-CV-1697 (RBW)

Case No. 05-CV-2112 (RBW)

**PETITIONERS' CONSOLIDATED MOTION TO VACATE
JANUARY 4, 2006 ORDERS TO SHOW CAUSE**

Petitioners in all Guantánamo detainee cases pending in this Court respectfully submit this Consolidated Motion to Vacate This Court's January 4, 2006 Orders To Show Cause.

On January 4, 2006, this Court issued Orders in each of the above-captioned actions requiring Petitioners to "show cause by January 12, 2006, why this action should not be dismissed for lack of jurisdiction," in light of the enactment of H.R. 2863, the Department of Defense Appropriations Act of 2006 (the "Act"), which, in relevant part, purports to amend the federal habeas statute with respect to individuals detained in Guantánamo Bay, Cuba.¹ On the same day, the D.C. Circuit Court of Appeals, which has *sub judice* the cross-appeals of Judge Green's and Judge Leon's decisions on Respondents' October 4, 2004 motion to dismiss all then-pending Guantánamo detainee cases, issued an Order requiring supplemental briefing by January 18, 2006 on essentially the same legal question -- the Act's effect, if any, on its jurisdiction over those Guantánamo detainee cases. *See e.g.* January 4 Order *Boumediene v. Bush*, No. 05-5062 (January 4, 2006).² Moreover, this same legal issue is being presented to the United States Supreme Court this week. Several briefs have been filed (or will be by the end of today) with the Supreme Court addressing what effect, if any, the Act has upon the Court's jurisdiction in *Hamdan v. Rumsfeld*, No. 05-184, and we understand that the parties will address

¹ In its Order, this Court cited Section 1005(e) of "H.R. 2863, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006," which is the title of Division B of H.R. 2863. However, Section 1005(e) is located in Division A of H.R. 2863, as titled above.

² A copy of this Order is attached hereto as Exhibit A.

this jurisdiction question in their briefing as well.³ Finally, also on January 4, 2006, Respondents filed a Notice of Supplemental Authority in all of the Guantánamo detainee cases, which stated that Respondents will shortly file “motion(s) to dismiss or for other appropriate relief,” in all cases pending in this District, based upon the Act’s purported effect on the District Court’s jurisdiction.

Because the precise legal issue raised in the Court’s Show Cause Orders is being addressed to the Supreme Court in briefs this week, and shortly will be taken up by the Court of Appeals, Petitioners respectfully submit that this Court should defer consideration of the effect of the Act, if any, on these detainee cases until an appellate decision on this issue is rendered. Accordingly, Petitioners ask that the Court vacate the Show Cause Orders.

First, there is good reason to expect that the Supreme Court will resolve this issue in *Hamdan*. As a predicate to reaching decision in that case, the Court is likely to determine whether the Act eliminates federal court jurisdiction over habeas petitions by Guantánamo Bay detainees such as Mr. Hamdan. For these reasons, as noted above, two *amicus* briefs are being submitted today addressing the jurisdictional effect of the Act, and we anticipate that the parties’ briefing will address this issue as well. We respectfully submit that that the most efficient course for this and other Courts in this District would be to await decision by the Supreme Court on the Act’s impact on their jurisdiction, if any.

Second, independent of the Supreme Court’s consideration of the Act in *Hamdan*, the D.C. Circuit ordered that supplemental briefing be submitted on this issue (*See, e.g., Boumediene*

³ The briefs addressing this question are: the *Amicus Curiae* brief of More Than 200 Detainees Incarcerated At U.S. Naval Station, Guantánamo Bay, Cuba, And Their Family Members, In Support of Petitioner and In Support of Jurisdiction and the *Amicus Curiae* brief for The Center For National Security Studies And The Constitution Project Supporting Petitioner.

v. Bush, No. 05-5062 (Order, January 4, 2006)) in connection with the *Boumediene/In re Guantánamo Detainees* appeals.⁴ In turn, counsel in several of the above-captioned cases will submit briefing on the jurisdictional impact of the Act to the Court of Appeals on January 18, 2006.⁵ The Appellate Court has specifically indicated that it will take up this precise legal issue when it decides those appeals, which have been pending since September 2005. We therefore can expect a decision from that Court in a reasonable timeframe that will resolve the Act's jurisdictional effect on these detainee cases. Again, the most efficient and appropriate course would be for the Court to defer decision on this issue, pending appellate resolution.⁶

Third, if the Court nonetheless determines that district court review of the Act's effect prior to appellate decision is appropriate, Petitioners respectfully request that the Court vacate or, at a minimum, modify, the Show Cause Orders, in light of Respondents' January 4 Notice of intent to file a motion to dismiss in all Guantánamo detainee cases. Petitioners submit that the most efficient means for this and other Courts of this District to address the effect of the Act, if any, on jurisdiction over Guantánamo detainee cases (apart from awaiting appellate decision) is to do so in response to Respondents' motion to dismiss. This will eliminate duplicative briefing on this issue by both Petitioners and Respondents, who can negotiate and present to the Court a reasonable schedule for briefing on the expected motion.

⁴ The Appellate Court's Order was following Respondents' letter submitted to the Court pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, which is attached hereto as Exhibit B.

⁵ See *Gherebi v. Bush*, 04-CV-01164; *Almurbati v. Bush*, 05-CV-01227.

⁶ In *Khadr v. Bush*, currently before Judge Bates, the parties jointly moved to vacate the Court's Order for briefing on this jurisdictional issue in light of both the Court of Appeals' Order and Respondents' stated intention to file a dispositive motion. *Khadr v. Bush*, No. 04-CV-01136 (Docket No. 150). Today, Judge Bates issued a Minute Order granting this motion, vacating his previous Order. *Id.* (Order on Motion to Vacate, January 6, 2006).

Petitioners' counsel have conferred with Respondents, and Respondents have indicated that they do not oppose either a reasonable extension of the briefing deadlines contained in the Court's recent Show Cause Orders, or proceeding with respect to the issue as Respondents proposed in their recently filed Notice of Supplemental Authority, that is, through the filing of a motion to dismiss by Respondents with a reasonable schedule for response and reply, as agreed to by the parties or otherwise established by the Court.

Finally, if the Court declines to vacate its Show Cause Orders under either of these alternative proposals, Petitioners respectfully request that the Court grant a 30-day extension of its briefing schedule, to permit the parties adequate time to address this very significant legal issue. Again, the parties have conferred, and Respondents do not object to a reasonable extension of this deadline.

RELIEF REQUESTED

For all of these reasons, Petitioners respectfully request that the Court:

- (i) vacate its Orders to Show Cause in all of the above-captioned cases; or
- (ii) vacate its Orders to Show Cause in all of the above-captioned cases and defer consideration of the Act's impact on its jurisdiction until Respondents file their motion to dismiss or for other relief; or
- (iii) modify its Orders to Show Cause in all of the above-captioned cases by extending the deadlines for the parties' submissions by 30-days.

In light of the immediate briefing schedule in the Show Cause Orders, Petitioners respectfully request that the Court consider this motion as expeditiously as possible. To that end, if it would be helpful to the Court, counsel can be available for an immediate status conference.

Dated: January 6, 2006
New York, NY

Respectfully submitted,

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* Not admitted in the District of Columbia District but qualified to practice as *pro bono* counsel pursuant to L.Cv.R. 83.2(9).

EXHIBIT

A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5062

September Term, 2005

04cv01142

04cv01166

Filed On:

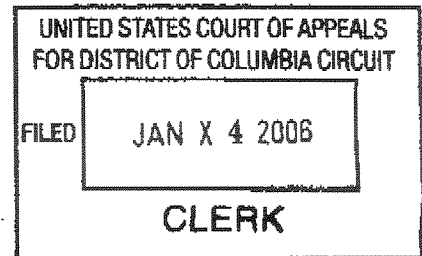
Lakhdar Boumediene, Detainee, Camp Delta, et al.,
Appellants

v.

George W. Bush, President of the United States, et
al.,

Appellees

Consolidated with 05-5063



05-5064

02cv00299

02cv00828

02cv01130

04cv01135

04cv01136

04cv01137

04cv01144

04cv01164

04cv01194

04cv01227

04cv01254

Khaled A. F. Al Odah, Next Friend of Fawzi Khalid
Abdullah Fahad Al Odah, et al.,
Appellants

v.

United States of America, et al.,
Appellees

Consolidated with 05-5095, 05-5096, 05-5097, 05-5098, 05-5099, 05-5100,
05-5101, 05-5102, 05-5103, 05-5104, 05-5105, 05-5106, 05-5107, 05-5108,
05-5109, 05-5110, 05-5111, 05-5112, 05-5113, 05-5114, 05-5115, 05-5116

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5062

September Term, 2005

BEFORE: Sentelle, Randolph, and Rogers; Circuit Judges

ORDER

It is **ORDERED** by the Court, on its own motion, that the parties file, within 14 days of the date of this order, supplemental briefs of no more than 15-pages addressing the effect of section 1005 of the Department of Defense Appropriations Act of 2006, Pub. L. No. 109-__, §1005 (signed by the President on December 30, 2005) on these appeals.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Cheri Carter
Deputy Clerk

EXHIBIT B



U.S. Department of Justice
Civil Division, Appellate Staff
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January 3, 2006

Mr. Mark Langer
Clerk, U.S. Court of Appeals for the D.C. Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *Al Odah v. United States*, Nos. 05-5064, 05-5095 through 05-5116
Boumediene v. Bush, Nos. 05-5062, 05-5063
Oral argument held on September 8, 2005

Dear Mr. Langer:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, appellants, the United States, *et al.*, in *Al Odah*, and appellees, Bush, *et al.*, in *Boumediene*, write to inform this Court of the enactment of section 1005 of the Department of Defense Appropriations Act of 2006, Pub. L. No. 109-____, § 1005 (signed by President Bush on Dec. 30, 2005) (copy attached), also known as the Detainee Treatment Act of 2005.

Section 1005(e)(1) of the Detainee Treatment Act of 2005 amends the habeas statute, 28 U.S.C. § 2241, to state that “no court, justice, or judge shall have jurisdiction to hear or consider” any habeas claim filed by an alien detainee held by the Department of Defense at Guantanamo Bay. It further bars jurisdiction over “any other action against the United States or its agents relating to any aspect of the detention,” if the detainee is currently in military custody or has been determined to an enemy combatant (after review by the D.C. Circuit). Section 1005 provides in subsection (e)(2) for “exclusive” jurisdiction in the D.C. Circuit to review the validity of final enemy combatant determinations of the Combatant Status Review Tribunal (CSRT), and in subsection (e)(3) grants the D.C. Circuit “exclusive” jurisdiction over the final decisions of any military commission rulings “rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).” The exclusive jurisdiction of the D.C. Circuit over all CSRT rulings and military commission decisions applies to all pending cases, § 1005(h)(2). The statute, including its elimination of statutory habeas jurisdiction, is effective immediately, § 1005(h)(1).

The Government anticipates filing with the Court no later than the week of January 9, 2006, a motion to govern further proceedings in these cases in light of the new legislation.

Respectfully submitted,

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Counsel for the United States, *et al.*
and Bush, *et al.*

Enclosure

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H. R. 2863

One Hundred Ninth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the fourth day of January, two thousand and five*

An Act

Making appropriations for the Department of Defense for the fiscal year ending
September 30, 2006, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

DIVISION A

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

That the following sums are appropriated, out of any money in
the Treasury not otherwise appropriated, for the fiscal year ending
September 30, 2006, for military functions administered by the
Department of Defense and for other purposes, namely:

TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest
on deposits, gratuities, permanent change of station travel
(including all expenses thereof for organizational movements), and
expenses of temporary duty travel between permanent duty sta-
tions, for members of the Army on active duty, (except members
of reserve components provided for elsewhere), cadets, and aviation
cadets; for members of the Reserve Officers' Training Corps; and
for payments pursuant to section 156 of Public Law 97-377, as
amended (42 U.S.C. 402 note), and to the Department of Defense
Military Retirement Fund, \$28,191,287,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest
on deposits, gratuities, permanent change of station travel
(including all expenses thereof for organizational movements), and
expenses of temporary duty travel between permanent duty sta-
tions, for members of the Navy on active duty (except members
of the Reserve provided for elsewhere), midshipmen, and aviation
cadets; for members of the Reserve Officers' Training Corps; and
for payments pursuant to section 156 of Public Law 97-377, as
amended (42 U.S.C. 402 note), and to the Department of Defense
Military Retirement Fund, \$22,788,101,000.

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(d) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this section, the term “cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

SEC. 1004. PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL ENGAGED IN AUTHORIZED INTERROGATIONS.

(a) PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL.—In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) COUNSEL.—The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution arising out of practices described in that subsection, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10, United States Code.

SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are

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in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the “Designated Civilian Official”) shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

(B) the probative value (if any) of any such statement.

(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

(d) ANNUAL REPORT.—

(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

(A) The number of detainees whose status was reviewed.

(B) The procedures used at each location.

(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

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(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

“(e) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider—

“(1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or

“(2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who—

“(A) is currently in military custody; or

“(B) has been determined by the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1005(e) of the Detainee Treatment Act of 2005 to have been properly detained as an enemy combatant.”.

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government’s evidence); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the

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release of such alien from the custody of the Department of Defense.

(3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).

(B) GRANT OF REVIEW.—Review under this paragraph—

(i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

(C) LIMITATION ON APPEALS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—

(i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a final decision has been rendered pursuant to such military order.

(D) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on an appeal of a final decision with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the final decision was consistent with the standards and procedures specified in the military order referred to in subparagraph (A); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to reach the final decision is consistent with the Constitution and laws of the United States.

(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

(g) UNITED STATES DEFINED.—For purposes of this section, the term “United States”, when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act.

(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection

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(e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

(a) REQUIRED POLICIES.—

(1) **IN GENERAL.**—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

(2) **ACKNOWLEDGMENT OF TRAINING.**—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

(3) **DEADLINE FOR POLICIES TO BE PRESCRIBED.**—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act.

(b) ARMY FIELD MANUAL.—

(1) **TRANSLATION.**—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

(2) **DISTRIBUTION.**—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

(c) **TRANSMITTAL OF REGULATIONS.**—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

(d) **ANNUAL REPORT.**—Not less than one year after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.

This division may be cited as the “Department of Defense Appropriations Act, 2006”.

EXHIBIT B



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January 3, 2006

Mr. Mark Langer
Clerk, U.S. Court of Appeals for the D.C. Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *Al Odah v. United States*, Nos. 05-5064, 05-5095 through 05-5116
Boumediene v. Bush, Nos. 05-5062, 05-5063
Oral argument held on September 8, 2005

Dear Mr. Langer:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, appellants, the United States, *et al.*, in *Al Odah*, and appellees, Bush, *et al.*, in *Boumediene*, write to inform this Court of the enactment of section 1005 of the Department of Defense Appropriations Act of 2006, Pub. L. No. 109-____, § 1005 (signed by President Bush on Dec. 30, 2005) (copy attached), also known as the Detainee Treatment Act of 2005.

Section 1005(e)(1) of the Detainee Treatment Act of 2005 amends the habeas statute, 28 U.S.C. § 2241, to state that “no court, justice, or judge shall have jurisdiction to hear or consider” any habeas claim filed by an alien detainee held by the Department of Defense at Guantanamo Bay. It further bars jurisdiction over “any other action against the United States or its agents relating to any aspect of the detention,” if the detainee is currently in military custody or has been determined to an enemy combatant (after review by the D.C. Circuit). Section 1005 provides in subsection (e)(2) for “exclusive” jurisdiction in the D.C. Circuit to review the validity of final enemy combatant determinations of the Combatant Status Review Tribunal (CSRT), and in subsection (e)(3) grants the D.C. Circuit “exclusive” jurisdiction over the final decisions of any military commission rulings “rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).” The exclusive jurisdiction of the D.C. Circuit over all CSRT rulings and military commission decisions applies to all pending cases, § 1005(h)(2). The statute, including its elimination of statutory habeas jurisdiction, is effective immediately, § 1005(h)(1).

The Government anticipates filing with the Court no later than the week of January 9, 2006, a motion to govern further proceedings in these cases in light of the new legislation.

Respectfully submitted,

Robert M. Loeb
Counsel for the United States, *et al.*
and Bush, *et al.*

Enclosure

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H. R. 2863

One Hundred Ninth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the fourth day of January, two thousand and five*

An Act

Making appropriations for the Department of Defense for the fiscal year ending
September 30, 2006, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
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DIVISION A

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2006

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TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

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tions, for members of the Army on active duty, (except members
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for payments pursuant to section 156 of Public Law 97-377, as
amended (42 U.S.C. 402 note), and to the Department of Defense
Military Retirement Fund, \$28,191,287,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest
on deposits, gratuities, permanent change of station travel
(including all expenses thereof for organizational movements), and
expenses of temporary duty travel between permanent duty sta-
tions, for members of the Navy on active duty (except members
of the Reserve provided for elsewhere), midshipmen, and aviation
cadets; for members of the Reserve Officers' Training Corps; and
for payments pursuant to section 156 of Public Law 97-377, as
amended (42 U.S.C. 402 note), and to the Department of Defense
Military Retirement Fund, \$22,788,101,000.

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(d) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this section, the term “cruel, inhuman, or degrading treatment or punishment” means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

SEC. 1004. PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL ENGAGED IN AUTHORIZED INTERROGATIONS.

(a) PROTECTION OF UNITED STATES GOVERNMENT PERSONNEL.—In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

(b) COUNSEL.—The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution arising out of practices described in that subsection, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10, United States Code.

SEC. 1005. PROCEDURES FOR STATUS REVIEW OF DETAINEES OUTSIDE THE UNITED STATES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA, AND IN AFGHANISTAN AND IRAQ.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—

(A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are

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in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and

(B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.

(2) DESIGNATED CIVILIAN OFFICIAL.—The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the “Designated Civilian Official”) shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.

(3) CONSIDERATION OF NEW EVIDENCE.—The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new evidence that may become available relating to the enemy combatant status of a detainee.

(b) CONSIDERATION OF STATEMENTS DERIVED WITH COERCION.—

(1) ASSESSMENT.—The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—

(A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and

(B) the probative value (if any) of any such statement.

(2) APPLICABILITY.—Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.

(d) ANNUAL REPORT.—

(1) REPORT REQUIRED.—The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.

(2) ELEMENTS OF REPORT.—Each such report shall include the following with respect to the year covered by the report:

(A) The number of detainees whose status was reviewed.

(B) The procedures used at each location.

(e) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

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(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

“(e) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider—

“(1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or

“(2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who—

“(A) is currently in military custody; or

“(B) has been determined by the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1005(e) of the Detainee Treatment Act of 2005 to have been properly detained as an enemy combatant.”.

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government’s evidence); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the

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release of such alien from the custody of the Department of Defense.

(3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).

(B) GRANT OF REVIEW.—Review under this paragraph—

(i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

(C) LIMITATION ON APPEALS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—

(i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a final decision has been rendered pursuant to such military order.

(D) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on an appeal of a final decision with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the final decision was consistent with the standards and procedures specified in the military order referred to in subparagraph (A); and

(ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to reach the final decision is consistent with the Constitution and laws of the United States.

(4) RESPONDENT.—The Secretary of Defense shall be the named respondent in any appeal to the United States Court of Appeals for the District of Columbia Circuit under this subsection.

(f) CONSTRUCTION.—Nothing in this section shall be construed to confer any constitutional right on an alien detained as an enemy combatant outside the United States.

(g) UNITED STATES DEFINED.—For purposes of this section, the term “United States”, when used in a geographic sense, is as defined in section 101(a)(38) of the Immigration and Nationality Act and, in particular, does not include the United States Naval Station, Guantanamo Bay, Cuba.

(h) EFFECTIVE DATE.—

(1) IN GENERAL.—This section shall take effect on the date of the enactment of this Act.

(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection

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(e) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

SEC. 1006. TRAINING OF IRAQI FORCES REGARDING TREATMENT OF DETAINEES.

(a) REQUIRED POLICIES.—

(1) **IN GENERAL.**—The Secretary of Defense shall ensure that policies are prescribed regarding procedures for military and civilian personnel of the Department of Defense and contractor personnel of the Department of Defense in Iraq that are intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, ensure that all personnel of Iraqi military forces who are trained by Department of Defense personnel and contractor personnel of the Department of Defense receive training regarding the international obligations and laws applicable to the humane detention of detainees, including protections afforded under the Geneva Conventions and the Convention Against Torture.

(2) **ACKNOWLEDGMENT OF TRAINING.**—The Secretary shall ensure that, for all personnel of the Iraqi Security Forces who are provided training referred to in paragraph (1), there is documented acknowledgment of such training having been provided.

(3) **DEADLINE FOR POLICIES TO BE PRESCRIBED.**—The policies required by paragraph (1) shall be prescribed not later than 180 days after the date of the enactment of this Act.

(b) ARMY FIELD MANUAL.—

(1) **TRANSLATION.**—The Secretary of Defense shall provide for the United States Army Field Manual on Intelligence Interrogation to be translated into arabic and any other language the Secretary determines appropriate for use by members of the Iraqi military forces.

(2) **DISTRIBUTION.**—The Secretary of Defense shall provide for such manual, as translated, to be provided to each unit of the Iraqi military forces trained by Department of Defense personnel or contractor personnel of the Department of Defense.

(c) **TRANSMITTAL OF REGULATIONS.**—Not less than 30 days after the date on which regulations, policies, and orders are first prescribed under subsection (a), the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement this section.

(d) **ANNUAL REPORT.**—Not less than one year after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of this section.

This division may be cited as the “Department of Defense Appropriations Act, 2006”.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISSAM HAMID ALI BIN ALI AL JAYFI, *et al.*,

Petitioners/Plaintiffs,

v.

GEORGE W. BUSH, *et. al.*,

Respondents/Defendants.

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)
) Case No. 1:05-CV-02104 (RBW)
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DECLARATION OF SERVICE

Michelle Kass hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that:

I am a paralegal at Hunton & Williams LLP, attorneys for Petitioners Issam Hamid Ali Bin Ali Jayfi, et al.

That on January 6, 2006, I served a true copy of Petitioners' Consolidated Motion to Vacate January 4, 2006 Orders to Show Cause on all parties via the Court's ECF System, and on all parties who did not receive these court filings via the Court's ECF system, by depositing same in a duly enclosed and sealed wrapper, with the correct postage thereon, in an official letter box duly maintained by the Government of the United States of America within the State of New York.

I declare under penalty of perjury that the foregoing is true and correct.

Executed January 6, 2006.



Michelle Kass

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
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| SALIM GHEREBI, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No: 04-1164 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
| |) | |
| ISA ALI ABDULLA ALMURBATI, <u>et al.</u> , |) | |
| |) | |
| Petitioners, |) | |
| |) | Civil Action No. 04-1227 (RBW) |
| v. |) | |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
| |) | |
| ELHAM BATTAYAV |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No: 05-714 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
| |) | |
| TAJ MOHAMMAD, |) | |
| |) | |
| Petitioner, |) | |
| v. |) | Civil Action No. 05-879 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| KARIN BOSTAN, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | Civil Action No. 05-883 (RBW) |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| NASRULLAH, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 05-891 (RBW) |
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| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| ASIM BEN THABIT AL-KHALAQI, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 05-999 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| MOHAMMED AMON, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 05-1493 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| AMEEN MOHAMMAD ALBKRI, <u>et al.</u> , |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | |
| |) | Civil Action No. 05-1639 (RBW) |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| ABDALHADI M. AL-SOPAI, <u>et al.</u> , |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Civil Action No. 05-1667 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| KADEER KHANDAN, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 05-1697 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| ISSAM HAMID ALI BIN ALI AL JAYFI, <u>et al.</u> , |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Civil Action No: 05-2104 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| JABBAROW OYBEK JAMOLIVICH, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No: 05-2112 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
| <hr/> |) | |
| ABDUL HALEEM, <u>et al.</u> , |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Civil Action No: 05-2376 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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| AMER MOHAMMON, <u>et al.</u> , |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Civil Action No: 05-2386 (RBW) |
| |) | |
| GEORGE WALKER BUSH, <u>et al.</u> , |) | |
| |) | |
| Respondents. |) | |
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ORDER

On December 30, 2005, President Bush signed into law H.R. 2863, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006 (“the Act”). Section 1005(e) of the Act, entitled Judicial Review of Detention of Enemy Combatants, raises serious questions concerning whether this Court retains jurisdiction to hear the above captioned cases. The question of whether this Court

retains jurisdiction to entertain these matters is currently pending resolution by the United States Court of Appeals for the District of Columbia Circuit. Accordingly, it is hereby this 11th day of January, 2006,

ORDERED that all pending motions in the above captioned cases are **DENIED WITHOUT PREJUDICE** until such time as the District of Columbia Circuit resolves the question of this Court's jurisdiction to adjudicate these cases.¹ It is further

ORDERED that all action in the above captioned cases is **STAYED** pending the jurisdictional ruling of the District of Columbia Circuit.

SO ORDERED.

REGGIE B. WALTON
United States District Judge

¹ If the District of Columbia Circuit concludes that this Court retains jurisdiction of these cases, the parties may file motions to reinstate the pending motions.